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TRANSCRIPT OF PROCEEDINGS

MONTANA CONSTITUTIONAL CONVENTION

February 20, 1972

to

March 21, 1972

Vol. IV

Convention Hall

State Capitol

Helena, Montana

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MONTANA CONSTITUTIONAL CONVENTION

February 26, 1972 33rd Convention Day Convention Hall

9:26 o'clock A.M. Helena, Montana

PRESIDENT GRAYBILL: The Convention will be in order. This morning, our Invocation will be given by Sarah Gackel, one of our pages from Rapelje. Will you all please rise?

Sarah.

SARAH GACKEL: Shall we bow our heads? Heavenly Father, we come to you today with humble hearts, thanking you for this brand new day that we can make plans for a new constitution. We thank you, too, that you brought us each safely here. We pray that as we go through this day and the problems the delegates face in making a constitution, that they'll let you be their guide. We pray for President Nixon and his wife, Pat, and their staff as they are in China. You know what they are facing, Lord. We pray that you might just let him be an instrument in thy hand for peace. We pray for the POW's, Lord, and for peace -- not only peace between two countries, Lord, but peace between two people, peace in the hearts of individuals, Lord, that only you can give. We pray that through this day, and throughout the rest of the CON CON, that you might be their leader and their guide, and they might look to you for everything. We also pray, Lord, that you'll let the meditation of our hearts and the words of our mouths be accept-

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able to you, O Lord. In thy name, we ask it, Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning by voting Aye on the voting machines.

CLERK SMITH: Delegate Bates, Delegate Cate, Delegate Toole.

PRESIDENT GRAYBILL: Who's absent?

CLERK SMITH: Delegate Toole.

PRESIDENT GRAYBILL: Toole was here. You can mark him present. Please take the vote.

Aasheim	-	Present	Bowman	-	Present
Anderson, J.	-	Present	Brazier	-	Present
Anderson, O.	-	Present	Brown	-	Present
Arbanas	-	Present	Bugbee	-	Present
Arness	-	Present	Burkhardt	-	Present
Aronow	-	Present	Cain	-	Present
Artz	-	Present	Campbell	-	Present
Ask	-	Present	Cate	-	Present
Babcock	-	Present	Champoux	-	Present
Barnard	-	Present	Choate	-	Present
Bates	-	Present	Conover	-	Present
Belcher	-	Present	Cross	-	Present
Berg	-	Present	Dahood	-	Present
Berthelson	-	Present	Davis	-	Present
Blaylock	-	Present	Delaney	-	Present
Blend	-	Present	Driscoll	-	Present

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1	Drum	-	Excused	Kelleher	-	Present
2	Eck	-	Present	Leuthold	-	Present
3	Erdmann	-	Present	Loendorf	-	Present
4	Eskildsen	-	Present	Lorello	-	Present
5	Etchart	-	Present	Mahoney	-	Present
6	Felt	-	Present	Mansfield	-	Present
7	Foster	-	Present	Martin	-	Present
8	Furlong	-	Present	McCarvel	-	Present
9	Garlington	-	Present	McDonough	-	Present
10	Graybill	-	Present	McKeon	-	Present
11	Gysler	-	Present	McNeil	-	Present
12	Habedank	-	Present	Melvin	-	Present
13	Hanson, R. S.	-	Present	Monroe	-	Present
14	Hanson, R.	-	Present	Murray	-	Present
15	Harbaugh	-	Present	Noble	-	Present
16	Harlow	-	Present	Nutting	-	Present
17	Harper	-	Present	Payne	-	Present
18	Harrington	-	Present	Pemberton	-	Present
19	Heliker	-	Present	Rebal	-	Present
20	Holland	-	Present	Reichert	-	Present
21	Jacobsen	-	Present	Robinson	-	Present
22	James	-	Present	Roeder	-	Present
23	Johnson	-	Present	Rollins	-	Present
24	Joyce	-	Present	Romney	-	Present
25	Kamhoot	-	Present	Rygg	-	Present

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Scanlin	-	Excused	Swanberg	-	Present
Schiltz	-	Present	Toole	-	Present
Siderius	-	Present	Van Buskirk	-	Present
Simon	-	Present	Vermillion	-	Present
Skari	-	Present	Wagner	-	Present
Sparks	-	Present	Ward	-	Present
Speer	-	Present	Warden	-	Present
Studer	-	Present	Wilson	-	Present
Sullivan	-	Present	Woodmansey	-	Present

CLERK SMITH: Mr. President, ninety-eight present, two excused.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number One, Reports of Standing Committees?

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number Two, Report of Select Committees?

CLERK SMITH: None.

PRESIDENT GRAYBILL: Number Three, Communications?

CLERK SMITH: None.

PRESIDENT GRAYBILL: Four, Introduction of Delegate Proposals?

CLERK SMITH: None.

PRESIDENT GRAYBILL: Five, Final Consideration?

CLERK SMITH: None.

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PRESIDENT GRAYBILL: Six, Adoption?

CLERK SMITH: None.

PRESIDENT GRAYBILL: Seven, Motions and Resolutions?

CLERK SMITH: None.

PRESIDENT GRAYBILL: Eight, Unfinished Business?

CLERK SMITH: None.

PRESIDENT GRAYBILL: Nine, Special Orders?

CLERK SMITH: None.

PRESIDENT GRAYBILL: Ten, General Orders of the Day? Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move the convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to move the convention into General Orders to consider the executive proposal. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it.

(Committee of the Whole)

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK SMITH: Mr. President, the following committee proposals are now on General Orders: Executive, Judiciary, Natural Resources, Revenue and Finance, Bill of Rights, Public

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Health, Education, Local Government, General Government, Style and Drafting Report Number One and Style and Drafting Report Number Two. The Bill of Rights Proposal Number Eight having been duplicated and placed on the delegates' desks on the 24th day of February 1972 at 9:00 o'clock A.M. is now in compliance with Rule Twenty-Three of the Montana Constitutional Convention rules. The Public Health Committee Proposal Number Nine, having been duplicated and placed on the delegates' desks on the 24th day of February 1972 at 9:00 o'clock A.M. is now in compliance with Rule Twenty-Three of the Montana Constitutional Convention rules. The Style and Drafting Committee Proposal Number One, having been duplicated and placed on the delegates' desks on the 24th day of February 1972 at 9:00 o'clock A.M. is now in compliance with Rule Twenty-Three of the Montana Constitutional Convention rules.

CHAIRMAN GRAYBILL: Very well. We have before us this morning, at least three matters for reconsideration on the executive article. The first is Mr. Nutting's. Mr. Nutting, may I read your proposal?

DELEGATE NUTTING: Yes.

CHAIRMAN GRAYBILL: Mr. Nutting's proposal is: Mr. Chairman. Having voted on the prevailing side on the adoption of the amendment to section five, subsection one, I move the Committee of the Whole to reconsider its action on adoption of section five, subsection one, as adopted. Mr.

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Nutting, where is section five, subsection one as adopted? Twenty-two and thirty-nine?

DELEGATE NUTTING: Page six at the top of the page would be one place --

CHAIRMAN GRAYBILL: All right. Section five, subsection one as adopted, reads: Officers of the executive department shall receive salaries as provided by law. We struck out in our original consideration the phrase, which may be increased but not decreased during the term of office.

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. I ask for reconsideration because several members requested it. This, if you'll remember, went through without a dissenting word. The members who wanted to speak on it, and did not, asked that I reconsider it. It does not mean that I have changed my mind. I firmly believe that it should remain as it is. I talked to the chairman of the Executive Committee. He has no objection to it but, as a matter of courtesy, I ask that it be reconsidered so these members can be heard. Thank you.

CHAIRMAN GRAYBILL: Very well. Is there debate, not on the issue, but on the matter of reconsideration? If not, all in favor of reconsideration, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

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CHAIRMAN GRAYBILL: The Chair is in doubt. All those in favor, please vote Aye on the voting machines and those against reconsidering five, sub one, vote No. Have all the delegates voted? Does any delegate wish to change his vote? Fifty-three having voted Aye, thirty-five having voted No, we will reconsider it. Mr. Nutting, may I read your proposal, or do you want to make this amendment?

DELEGATE NUTTING: I wish to have the amendment remain just like it is, but if someone wishes to object -- and which two people did -- then I would prefer they take it from here. Thank you.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Thank you Mr. Chairman. Thank you Mr. Nutting. I didn't talk about this when it came up. I didn't think that it would go through, and I was surprised. The only thing that I would like to point out to the assembly in this connection, is that what we've done here, of course, is remove a restraint which otherwise would have been on the legislature, preventing it from retaliating against either the executive or the judiciary. I think that the executive is probably strong enough to resist the threat of a diminution in salary during the term of the governor, for example, by a legislature of the opposite party. However, the judiciary is not in the same position as the executive. I submit to the assembly that it is possible that a stubborn legislature, when

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faced with the prospect that the supreme court is about to overturn a piece of legislation which the legislature favored and which the legislature passed, could and possibly would, reduce the salaries of the justices out of a spirit of retaliation. There has been some difficulty between the legislature and the judiciary anyway, so far as the matter of salaries are concerned. It appears that there is some justification for the feeling of resentment that the judges have expressed toward the legislature about the manner in which their salaries have been treated. I submit to you that this should be considered, because it does open up the possibility that the legislature can, through the salaries of the justices, attempt to intimidate them or actually intimidate them in the performance of their duties as judges.

CHAIRMAN GRAYBILL: Mr. Arness, we have no motion before us now. Do you want to make a motion to put it back in the way it was?

DELEGATE ARNESS: Yes. I move that the section be restored to its original condition, so that it reads that the salaries provided by law, which may be increased but not decreased during the term of office. I have already stated the reasons for my motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. We'll consider then, Mr. Arness' motion, which would restore the last clause, the words, which may be increased but not decreased during the

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term of office. That's the issue we're debating.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I glossed over this in my discussion the other day and I want to tell the convention why the committee put in the original subsection one. In our current constitution, or in the constitution as it was originally enacted in 1889, there was a provision in it for both the executive, legislative and judicial, that the salaries could not be increased during the term of office. We've all seen the foolishness of doing that, because of the inflation that has gone through, and as we've lengthened the terms of office, why, people come in and get elected; there's a raise given and they can't get it for four years, and so in that interim period, the inflation has eaten up that raise and they're always behind, and it has been a mess. So, what happened was that the judiciary article was amended by the people to provide that the judicial salaries could be increased during the term of office, but that they could not be decreased. We thought it was consistent to make that same provision in the executive article. As a matter of fact, the executive article was more restrictive in that it provided, in the original constitution, that they could be decreased, but that they could not be increased. I think Mr. Arness' comments are valid, except that as I read the judicial article, it's going to come out to say just exactly what the majority

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of the -- unanimous majority -- unanimous feeling of the Executive Committee was. Their article is going to come out that it may be increased but not decreased. We already took action in the convention to authorize a commission to study these, and I got the impression that it was the unanimous view of the convention, that everybody realized that they should be able to be increased. In the comments which I wrote, I thought that I was being a little sarcastic, but I said that our history has shown that the legislature has not been overgenerous to giving raises to any elected offices, and the reason for that is because they've always had money problems. At any rate, the reason the Executive Committee reversed it and said that they may be increased, and the amendment does not prohibit that now, and all that would be done if you put the provision back in, is that you would prohibit the legislature from decreasing it. I, frankly, am not too worried that they ever will, arbitrarily, decrease anybody's salary just to punish him. Of course, we have the king who can always veto his salary decrease, but it just seemed to me, that as originally drafted, we were being consistent with the present judiciary article and that's why we drafted it as such.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman. At our Style and Drafting meeting this morning, I was reminded of another

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action that the convention has taken, which bears on this subject. I simply would like to remind all hands what section five of the legislative article contains. That deals with compensation of legislators and subsection two of section five was amended on the floor to read as follows: A salary commission shall be created by the legislature to recommend legislative -- and then it was amended on the floor -- executive, and judicial compensation. I want to suggest to all hands present, that if we do not restore the flexibility in the original section five of the executive article, we will simply blunt the function of the salary commission, because there really will be no point in it, if the recommendations they make to keep current with the financial and economic trends of life, are obliterated by prevention of adjustments for increases they find to be justified.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: One of the very impressive thoughts that has been brought out over and over again at this convention, is the fact that no matter what board we set up, or what commission we inaugurate, that the legislature is really going to decide by the amount of money they give it, whether it's going to operate or not. I'd hate to think that we'd put our executive department, or the state officers that we talked about yesterday as being so important, in the same category, that in every respect they would become like employ-

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ees of the legislature. I think they need a guarantee a little bit stronger than that.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Arness' amendment to restore to section five, subsection one, the language, which may be increased but not decreased during the term of office.

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. If you will just see what the amendment does, it does not prevent increases; it does not prevent decreases. As far as the amendment is concerned, we have been operating under the principle for the past eighty years, that the legislature could decrease it and there has been no mention of any case where it has been accomplished. I'm merely leaving the point that it could be done either way. I'm looking forward to a situation that could conceivably happen, like in the early 30's, when with the governor's salary where it is now, it could be conceivable that we would not be able to reduce the governor's salary in case of a crash, for four years. We'd have to dig up the tax money to pay that kind of a salary and, under those conditions, I think the people would want the salary decreased -- the general population would. I don't think there has been any abuse of this for the past eighty years, and I see no reason why we should tie it into the constitution that there cannot be a decrease in the future. Under my amendment, in-

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creases are allowed; decreases are allowed. That's all I suggest.

CHAIRMAN GRAYBILL: Mr.Arness.

DELEGATE ARNESS: I think that I should point out, that for the last eighty years, it has not been possible to decrease the salary of a judge in the state. The amendment that I've proposed here is aimed only at insuring that we attempt, so far as is possible, to maintain the independence of the judiciary. In order to do that, I think we must safeguard their salaries. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE HANSON: Mr. President. Unless I read this wrong, we are only considering here the executive department, and I don't believe it would have any effect, Mr. Arness, on the judiciary department.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I think that the people of Montana are well aware that the judiciary has never had a decrease. The last three sessions of the legislature have each increased the salaries of the judiciary.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. Chairman. I was thinking that we could get a pretty liberal group in here and they'd give an increase, and the next one would give another big increase, and they know it's more than they should have, and you'd

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have no power to decrease it. I'd like to see it so you can go either way.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President and delegates. I can go either way on this, but since we had a commission, I wonder if they might have their hands tied if we keep this last sentence. For example, they might think about a compensation which might include, say, a compensation over a period of years after retirement. There might be an income tax loophole that they might want to use, and maybe they might settle for a decrease in salary if they could get their compensation extended over a period of years after retirement. I kind of feel that we shouldn't tie our legislative hands or the commission's hands by retaining the last sentence. I would reject the motion to amend it.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Arness' motion to add this half sentence to subsection one of section five. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and so ordered. Are there other amendments to section five? If not, Members of the Committee, you have before you -- I guess, Mr. Joyce, I need you to make a motion that section five be reenacted.

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DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report after having had under reconsideration section five, subsection one, of the executive article, that the same be recommended for adoption as amended.

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered. All right, next we have a proposal -- I take it, Mr. Ward and Mr. Roeder that you do not want to reopen section seven now.

DELEGATE ROEDER: That's right, Mr. Chairman.

CHAIRMAN GRAYBILL: All right. Then the next one, Mr. Vermillion, you wanted to reopen section one, subsection one, is that correct?

DELEGATE VERMILLION: That's correct, Mr. President. Having voted on the prevailing side, I'd like to have the committee reconsider section one, subsection one, of the minority proposal. This would be on page forty-five. I've been asked to do this. I don't really think that I will change my vote, but I've been asked to do this because it was pointed out to me that we did not actually have the opportunity to vote on each office individually. We have been voting, as we go through this subsection by subsection, and there are

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those who feel that it would be better if we had an opportunity to vote on each individual office, in order that we could be recorded as how we stand on, not only the governor but also the lieutenant governor, secretary of state, state treasurer and the like. I move to have section one, subsection one, of the minority proposal on page forty-five reconsidered.

CHAIRMAN GRAYBILL: Is there debate on the motion to reconsider?

Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, I would like to say a word or two in support of Mr. Vermillion's motion. I was one of the persons who asked him to make the motion to reconsider because I knew he was on the prevailing side. I think you ought to take into consideration, when you vote on this motion for reconsideration, this thought. We voted on this section with very little discussion. We did not vote on individual offices and I think a lot of people voted as they did, in order to protect the office of superintendent of public instruction. I think if that office had been segregated in our discussion, and we had isolated some of these other offices to talk about, I think the outcome might have been quite a bit different. One final comment -- I'm going to be very hard pressed when I go home. I promised the people of district number eleven, that one thing I would do was make myself available to the full extent of my physical capacities to report to

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the people, by talking to service clubs, etc. I'm going to be very embarrassed when they ask me, well, what was the vote to retain treasurer, and I'm going to have to say that we never really voted on it. What was the vote to retain the auditor and I'm going to say, we never really segregated it and voted on it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on the motion of Mr. Vermillion to reconsider section one, subsection one, of the minority report which was adopted. All in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and we will not reconsider it.

UNIDENTIFIED DELEGATE; May we have a roll call vote?

CHAIRMAN GRAYBILL: You may vote but we won't record it. All those in favor, vote Aye and opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? Forty-three having voted Aye, forty-five having voted No, the motion was defeated. I didn't realize I could call them that close.

Mr. Kelleher.

DELEGATE KELLEHER: (Inaudible -- speaker not turned

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on) -- for the world series.

CHAIRMAN GRAYBILL: Mr. Felt, do I understand that the one you put up here is not complete, and you want to add a sentence? Do you want to use Mr. Murray's mike there?

DELEGATE FELT: Mr. Chairman. I discovered a typing error that's being corrected right now. I think it's all done, very simple.

CHAIRMAN GRAYBILL: Very well. Mr. Felt has a motion to reconsider section four, subsection six, which is the qualifications of the -- wait a minute -- which is the state auditor's office. Mr. Felt, do you wish to speak on the motion to make the reconsideration?

DELEGATE FELT: Mr. Chairman, I'll be glad to speak on it, but I would be ineligible to make the motion myself. Would you prefer to have the motion put first before I speak?

CHAIRMAN GRAYBILL: Right. Who's to make the motion?

DELEGATE FELT: Mr. Murray.

CHAIRMAN GRAYBILL: Mr. Murray, will you make the motion?

DELEGATE MURRAY: Mr. Chairman. Having voted on the prevailing side, I move to reconsider.

CHAIRMAN GRAYBILL: Section four, subsection six.

DELEGATE MURRAY: Section four, subsection six and defer to Mr. Felt for the reasoning.

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CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Mr. Chairman and members. We will come forward with a big retreat. That's the best way to move forward sometimes, and accepting the sense that we felt existed here in the body, and after discussion with a number of persons, our present proposal would be to incorporate exactly the lines two through five on page thirty-nine of the minority report, and then to add words dealing with the legislative post auditor for the purpose of constitutionalizing that office, making it immune from being found to be an unconstitutional act of the legislature to create its own legislative post audit committee, which then selects the legislative post auditor. The exact language used in that is very much similar to the language used in our present statute, but it does include, also, some additional words taken from the recent Michigan State Constitution which, along with practically all other new constitutions, do contain provisions of this type. I won't speak any further because I think I'm getting too close to the merits, but I wanted the convention to realize that, in reconsidering, I'm not going to just ask you to vote again on the same proposal that was defeated. It will be a completely different approach to this problem of external auditing.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: I rise to resist the motion. We

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debated it yesterday. We had a decision. What's being brought up is statutory. It can be handled by the legislature and I see no point in reconsideration.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Murray's motion to reconsider section four, subsection six, the state auditor. A roll call has been called for. All those in favor of reconsidering section four, subsection six on the state auditor, please indicate by voting Aye, and those opposed by voting No. Have all the delegates voted? Does any delegate wish to change his vote? Close the vote. Take the vote.

Aasheim	-	Nay	Blaylock	-	Nay
Anderson, J.	-	Nay	Blend	-	Nay
Anderson, O.	-	Nay	Bowman	-	Abs
Arbasas	-	Aye	Brazier	-	Nay
Arness	-	Nay	Brown	-	Aye
Aronow	-	Aye	Bugbee	-	Aye
Artz	-	Aye	Burkhardt	-	Nay
Ask	-	Aye	Cain	-	Nay
Babcock	-	Aye	Campbell	-	Nay
Barnard	-	Aye	Cate	-	Nay
Bates	-	Nay	Champoux	-	Aye
Belcher	-	Abs	Choate	-	Aye
Berg	-	Aye	Conover	-	Nay
Berthelson	-	Aye	Cross	-	Nay

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1	Dahood	-	Aye	James	-	Abs
2	Davis	-	Nay	Johnson	-	Aye
3	Delaney	-	Aye	Joyce	-	Aye
4	Driscoll	-	Aye	Kamhoot	-	Aye
5	Drum	-	Abs	Kelleher	-	Abs
6	Eck	-	Nay	Leuthold	-	Aye
7	Erdmann	-	Aye	Loendorf	-	Nay
8	Eskildsen	-	Aye	Lorello	-	Nay
9	Etchart	-	Aye	Mahoney	-	Nay
10	Felt	-	Aye	Mansfield	-	Nay
11	Foster	-	Aye	Martin	-	Nay
12	Furlong	-	Aye	McCarvel	-	Aye
13	Garlington	-	Nay	McDonough	-	Aye
14	Graybill	-	Aye	McKeon	-	Nay
15	Gysler	-	Aye	McNeil	-	Nay
16	Habedank	-	Nay	Melvin	-	Aye
17	Hanson, R. S.	-	Aye	Monroe	-	Aye
18	Hanson, R.	-	Aye	Murray	-	Aye
19	Harbaugh	-	Aye	Noble	-	Nay
20	Harlow	-	Nay	Nutting	-	Aye
21	Harper	-	Aye	Payne	-	Nay
22	Harrington	-	Abs	Pemberton	-	Nay
23	Heliker	-	Aye	Rebal	-	Nay
24	Holland	-	Aye	Reichert	-	Aye
25	Jacobsen	-	Aye	Robinson	-	Aye

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Roeder	-	Nay	Studer	-	Aye
Rollins	-	Nay	Sullivan	-	Aye
Romney	-	Nay	Swanberg	-	Abs
Rygg	-	Abs	Toole	-	Nay
Scanlin	-	Abs	Van Buskirk	-	Abs
Schiltz	-	Aye	Vermillion	-	Aye
Siderius	-	Nay	Wagner	-	Aye
Simon	-	Nay	Ward	-	Abs
Skari	-	Aye	Warden	-	Nay
Sparks	-	Nay	Wilson	-	Aye
Speer	-	Aye	Woodmansey	-	Nay

CLERK SMITH: Mr. President, fifty Delegates voting Aye, thirty-nine voting No.

CHAIRMAN GRAYBILL: Fifty Delegates having voted Aye, and thirty-nine No, we will reconsider section four, subsection six. You'll find that on page thirty-nine. It's line two to five and you should have put a small bracketed six in there to indicate that it's subparagraph six. The text was incorrect.

Mr. Joyce.

DELEGATE JOYCE: The printed material on page thirty-nine of the minority report did not pass. It was amended on the floor.

CHAIRMAN GRAYBILL: Oh, so it did.

DELEGATE JOYCE: As I recall it, it says that the

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auditor shall have such duties as are provided by law, or words to that effect.

CHAIRMAN GRAYBILL: All right, I'll find that language.

Mr. Felt, you may now make your motion.

DELEGATE FELT: Thank you Mr. Chairman and thank you fellow delegates for the opportunity. I realize our time problem, and even though we have many serious matters, we have to budget that time. I will be brief. As I've already stated, this continues, in effect, the present elected state auditor's duties as they exist today. It also continues, but now places into the constitution, the duties and functions of our present legislative post auditor. The legislative post auditor is the thing that I am particularly interested in seeing constitutionalized. I do know that in addition to considerable opposition -- and you always find opposition when someone talks about having departments of government audited externally by independent people -- that it was very difficult, and took several sessions, to establish this type of external auditing and, therefore, I have some fear that another group of individuals might, at some future time, feeling the same pressures that have been felt by other legislative bodies, decide that this is an unnecessary expense -- like deciding you are not going to carry insurance, and you hope that you won't need it, so maybe you'll do away with it -- and the states

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that have adopted constitutions recently, six of the eight that have proposed recent constitutions, and six of the eight were approved by the people -- it contained in their constitutions language such as this calling for a legislative post auditor. I know that practically all of the comments made yesterday were to the effect that they're very pleased with the way the legislative post audit program has been functioning for these four years. I think this is true of the people in general, and I think they would approve of our now placing this in the constitution so that they know, and we know, it will be permanent. The proposal -- I want to read it. It could cause subsection six of section four to read as follows: The state auditor shall be the custodian of all fiscal records of the state. He shall be the issuing officer for all state warrants, with other duties and powers provided by law. In addition to the state auditor, the legislature shall appoint a legislative post auditor, who shall conduct post audits of financial transactions and accounts of the state, and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state, established by this constitution, or by law, and performance post audits thereof. The appointment may be made through a legislative post audit committee or as otherwise provided by the legislature. I want to clear up a little confusion, because I have found, not only in the last twenty-four hours but in the pre-

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ceding years, that there seems to develop some confusion about auditing. First, I want to make it clear that we are talking about only external auditing. This has nothing to do with pre-auditing or any kind of internal auditing that is done on behalf of departments for their own information to make sure that they are complying with the law as best they can. This is the checkup by an external audit. That's what we're talking about. Now, I also want to be sure that you realize there are three ways of selecting these external auditors that are used by the fifty states. Some are appointed by the governor. No one, I think, today, encourages that. If there's any one thing that would cause me to have to oppose this whole constitution, it would be if we had attempted to select this external auditor by having him appointed by the governor or from within what would be considered the executive branch of government, as it is commonly considered. I feel sure, for instance, that Mr. Bardanouve and others with whom I've worked on this for a long time, we fought that battle a long time ago, and established the fact that it was improper to have this appointment made by the governor, and I feel sure that he would feel that way today. I attempted to contact him but found that he has very sensibly been in Hawaii for the last few weeks, and is not available. The second method of selecting an external auditor is to have them elected by the people, but where this method has been used, as in Montana, it has

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generally worked out that the legislature gradually takes away any powers of auditing. So, you have someone called the state auditor, but he doesn't do any auditing. So, this has not, in recent years, been considered a very successful way of obtaining auditing. The final way is to have them selected by the legislature. This is the way that has been in vogue, particularly the last fifteen or twenty years, which Montana joined four years ago, and which other states are joining, and which I am very anxious to see firmed up by this constitutional language. I will shorten what I would like to say on some other possible confusion. We did have committee hearings, and I have been in contact with the legislative post auditor and obtained some valuable information from him. The state auditor was also before us. The head of the department of administration -- all of them -- appeared before our committee discussing, at length, these problems of auditing. On the matter of costs, just so there won't be any confusion, the figures which you heard yesterday were unintentionally given as though they represented what the additional cost would be. In checking with the state auditor myself, I find he had looked up the cost of the present auditing programs as they exist, and that was the figure you heard, rather than of any additional. Of course, the proposal that is included in this proposed amendment now, does not call for any additional auditing beyond what we are having now, but it does make certain that we do not

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lose what we are having now. I will not take any further time. I would be willing to answer questions if this is desired or if there's anything else I could do.

CHAIRMAN GRAYBILL: Just a moment, Mr. Joyce, before we answer questions so that everyone understands, the language that we adopted yesterday on the amendment put in by Mr. Martin was: The auditor shall have such duties as provided by law. That's the present article. Now, the proposal by Mr. Felt this morning is to go back to the language that was in the minority report: The auditor shall be the custodian of all fiscal records. He shall be the issuing officer for state warrants, with other duties as provided by law. Then he adds several lines which, in effect, add: In addition to the state auditor, the legislature shall appoint a legislative post auditor, and it goes on and explains the post auditor. All right, that's what we're considering.

Mr. Joyce.

DELEGATE JOYCE: Will Delegate Felt yield to a question?

DELEGATE FELT: What is the purpose of including the words, that the state auditor shall be the custodian of all fiscal records of the state?

DELEGATE FELT: These were the words in the proposal of the minority of the committee, and their purpose is to continue the present policy of having those records safe in the

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office of the state auditor as the custodian of the records.

DELEGATE JOYCE: Will you yield to another question, Mr. Felt?

DELEGATE FELT: Yes, I'll yield.

DELEGATE JOYCE: When the amendment was made on the floor yesterday, do you believe that that particular issue was lost by the minority report?

DELEGATE FELT: No, I did not feel that it had even been dealt with, Mr. Joyce. My original motion had been to adopt the minority report, and then I had immediately made a substitute motion to delete all of the minority report substituting all new language. We never got to my original motion which dealt with those two sentences, because Mr. Martin's intervened and replaced both of my motions.

DELEGATE JOYCE: Will you yield to another question, Delegate Felt?

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I will yield.

DELEGATE JOYCE: Well, when Mr. Martin's motion passed then, did that not, in effect, defeat the language that was included not only in your motion, but in the minority report?

DELEGATE FELT: In a sense, Mr. Joyce, it had the final effect of that. I thought, when you asked the other question you meant, did we discuss these particular two sent-

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ences, which had appeared in the minority report. To my knowledge, there was never any discussion of either sentence.

DELEGATE JOYCE: Mr. Chairman, may I speak?

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Well, may I review for the convention, what's involved here. If you will recall, number one, the majority of the committee came out deleting the state auditor from the state constitution, so that thereafter, the office could still be retained and duties assigned, new name assigned to it or anything else. We were defeated on that. So, I accept the defeat. Then, the minority report came up, and the minority report, as originally moved, wanted to require for all time, that the state auditor would be the custodian of all fiscal records of the state and be the issuing officer of all warrants. Mr. Martin rose to amend that to not require that he do that for all time, as he isn't doing it now. He only has part of the fiscal records. The issue was debated on the basis of Mr. Felt's motion, and Mr. Martin's substitute motion, and it had the effect, I think, of defeating the minority report in that connection. So, therefore, now, actually, Mr. Felt's current motion brings two issues before the convention. Number one, should the state auditor be the custodian of all fiscal records and the issuing officer of all state warrants from now until the constitution is amended? That's issue number one. Issue number two is that it could be

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that the state auditor would have duties prescribed by law, and that the legislative post audit would be permissible, and not unconstitutional in conflict with the word, auditor, used in the constitution. So, I submit, there are two issues. I am violently -- I shouldn't say violently (laughter) -- I'm philosophically opposed to issue number one. I am not opposed to issue number two because -- and I can't help say this to get a little needle in at the convention -- this whole matter wouldn't have come up at all if you'd have followed the majority report, but then, that's the way it goes. So, I think I am going to make a substitute motion, and I'm going to move to strike from Mr. Felt's proposal the words, the state auditor shall be the custodian of all fiscal records of the state period, and continuing to strike, shall be the issuing officer of all state warrants. After having done that, the first sentence of the section would then read, what the convention has already adopted, namely, that the state auditor shall have such ditues and powers provided by law, plus Mr. Felt's amendment. So, I so move, Mr. Chairman.

DELEGATE FELT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I would accept the amendment and, if agreeable with the Chair, just incorporate it, and I believe we're reaching the very thing that we really desired, because my principle concern is what Mr. Joyce referred to as

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issue number two. If they like the language that he proposed, that would be quite satisfactory with me. Thank you.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, doesn't this bring up the question that you referred to the Rules Committee yesterday? What was the ruling of the committee on this point? This is something that I think was never announced, and I think we are back where we were again, aren't we?

CHAIRMAN GRAYBILL: With the exception of a couple of words, we are. Let me explain that the Rules Committee met, but Mr. Felt withdrew his motion of yesterday and decided to reconsider this executive article, in this other form, and therefore the issue of how he should do it was not finally dealt with by the Rules Committee. Now, having amended it in this manner so that it's tantamount to adding a legislative post audit;at this point, the Chair is back in the spot that you mentioned, Mr. Arness. Now, whether the addition of the phrase, in addition to the state auditor, will save us or not remains to be seen.

Mr. Felt.

DELEGATE FELT: Yesterday, I had proposed adding an additional section at the end of the article, without any motion to reconsider. That's the fundamental difference, I think, as far as rules or their interpretation are concerned. Today, since it seemed like we weren't saving any time by doing

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it the other way, we did make the motion to reconsider and it was approved on the floor of the convention. So, this action is open, in my opinion.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. Mr. Garlington and one of the members of the Committee on Style and Drafting, has suggested quite properly to me, the possibility that Style and Drafting would have to do something with this section when it was finally approved, if it is. What station am I getting this morning, Betty? I think we'd have a serious problem in Style and Drafting of moving this to the legislative department where it would belong, without at least the tacit approval or this information to the committee, that that's what we were going to do, and that's what I think we would do if this is approved.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I think we're right back where we were yesterday. We're in the legislative article, and I don't think there's any doubt about this. Now, if this convention is going to adopt the procedure of going back to amend this article, with some other that belongs someplace else, it's going to be a long way down the line because I think we've got eight left to go. Now the legislative article, I know what Mr. Felt is getting at; he's trying to get legality of something; he's trying to get around a supreme court decision, but I think

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under the legislative article, as I interpret it, is that the interim committees will now be made legal. We'll have that point out of the constitution. I think they have ample consideration, then, to have the legislative audit if the legislature, in its wisdom, continues it. I think there's plenty of power to get at the governor to continue to get the appropriations, because I'm sure they'll be just as smart a legislators as I ever was. If I started worrying about the governor, and whether he's going to sign it or not, he'd get the legislative appropriation along about the fifteenth day of the session, and he'd have to veto it, and I'd have her back down and you don't get yours, Mr. Governor, until we get ours. Now, I know how the legislative process operates. So, I think that this thing had better be left alone and not touched, because now it is strictly legislative, only using this word, as the president has stated, under the state auditor, and I don't want to contact anything with the legislature over in the executive branch of government.

CHAIRMAN GRAYBILL: The issue is on Mr. Joyce's motion to strike the first two sentences, and to use the first sentence, which we had in section six before, that the legislature -- that the auditor shall have such duties as are prescribed by law, and then add the last part of Mr. Felt's motion. So, if you want to debate that issue -- that is, Mr. Joyce's substitute motion -- please rise. If not, we'll quit

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that issue.

Mr. Wilson.

DELEGATE WILSON: Mr. President. I am a little bit concerned, and I would like to call it to the attention of this body, that at the present time, the state auditor is the custodian of all the warrants for the state of Montana. He has them under his jurisdiction and, in fact, you have to about get a court order to get one of those warrants, or get a photostatic copy thereof. It was called to my attention by both the state auditor and the attorney general, that this is really an important legal function, and that these warrants should be kept someplace where no one can disturb them, or maliciously remove one from the records. This disturbs me just a little bit. I wish the body would think about maybe retaining those words in the article to the effect that the state auditor would be the custodian of all state warrants, and then, he shall have such other duties as may be provided by law.

CHAIRMAN GRAYBILL: All right. We're debating Mr. Joyce's substitute motion.

Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. We have provided the two parts necessary for good internal control. We have a treasurer that takes care of the money; we've got an auditor that takes care of the books. We've got one step left to go;

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we've got to have somebody to come in and see that they've both done their job correctly.

CHAIRMAN GRAYBILL: Now, Mr. Artz, I really am going to stop you. That's arguing the second half of the issue. I want to know whether this body wants to strike the first two sentences, which have nothing to do with the legislative auditor so --

DELEGATE ARTZ: I thought that he had added the rest of it on Mr. Joyce's --

CHAIRMAN GRAYBILL: He does, but the point we're trying to get at is the first part. Then, we'll debate the legislative auditor thing after we've got that out of the way.

DELEGATE ARTZ: Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: I would like to inform the convention what those words, all fiscal records, include. I was concerned about this before the thing came up on the floor yesterday, and I went down to the second floor here to inquire what, all fiscal records, would include. I was told that these would include all the books and accounts of all the state offices, including the court, the governor's office, the secretary of state, etc.; it would include all the books and accounts of all state agencies; it would include, probably, even the records of the budget bureau. The term, all fiscal records, is about as broad and sweeping as it can get, and

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far exceeds Mr. Wilson's concern about warrants. The definition of fiscal records means, I was told, any record pertaining to the receipt of, or expenditure of, public funds. The effect of this would be to put in single custody all the records for which pre-auditing, disbursement, accounting and post-auditing would be done, and this violates one of the basic rules that the disbursing officer should not also be the custody of all the financial records. So, I feel that the convention ought to know that these words, all fiscal records, would substantially change the functions of the department of administration, and the entire bookkeeping and accounting records, which have now been established under the reorganization plan, and I doubt that this is what is intended.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I rise in support of Chairman Joyce's substitute motion. I don't know if I can add to the substance of the discussion here, because Mr. Garlington has covered it with his customary thoroughness, but I would like to point out to the convention, that if you do not sustain Mr. Joyce, you are not supporting the status quo. You will be introducing radical change in the practices of maintaining records in this government -- radical change, thank you.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. Would Mr. Garlington yield to a question?

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CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Be glad to.

DELEGATE WILSON: Mr. Garlington. I have one thing that is bothering me. We have stricken the offices of state examiner. In our local area, we have serious problems with a certain school district in funds. This worries me a little bit now. Who is going to be available to check on any deficiencies or discrepancies that might creep into such school boards or school districts or counties?

DELEGATE GARLINGTON: Our committee was informed by a Mr. Sacksbee, director of the department of administration, that that department was in the process of developing and installing a new system of bookkeeping and accounting for all of the state and local egencies. He said that when it got done, which would be in another year or two, Montana would have one of the more modern, and progressive and efficient systems of this kind. At the present time, the state examiner does the auditing of school districts, cities, counties, etc., and the state examiner told the committee that he felt that his office should be not a constitutional function, because of this very subject of fluidity and change in the whole auditing, accounting and record keeping area. I would say to Mr. Wilson, that the state examiner or some other similar officer, under the state department of administration, will certainly continue to do the auditing function to cities, counties, school districts,

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and agencies of that kind.

DELEGATE WILSON: Mr. President. These are just some of the things that bother me about what we're doing here. Are we providing adequate safeguard for the peoples' protection in the different functions of state government?

CHAIRMAN GRAYBILL: Mr. Martin was next. Mr. Martin yields to you, Mr. Garlington.

DELEGATE GARLINGTON: I just want to remind the convention again that section twelve of the revenue article contains quite a clear mandate of protection for all this. It reads: The legislative assembly shall enact the necessary laws to insure strict accountability of all revenue received and monies spent by the state, subdivisions, and districts thereof.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. I went up to the roster and tried to interpret what the present amendment, as it reads, says. I wonder if we could, for the benefit of all the delegates, have it read.

CHAIRMAN GRAYBILL: Mr. Joyce's substitute motion is to strike the first two sentences effectively, of Mr. Felt's motion, and insert the sentence that we adopted yesterday. That sentence is, the auditor shall have such duties as are prescribed by law. Then the next sentence would be, in addition to the state auditor, the legislature shall appoint a

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legislative post auditor, etc. That's the rest of Mr. Felt's amendment. So, what we're debating now is whether to eliminate the first two sentences. The first two sentences of the Felt amendment say: The state auditor shall be the custodian of all fiscal records of the state. He shall be the issuing officer of all state warrants with other duties and powers provided by law. Now, Mr. Joyce wants to remove those two sentences and replace it with a sentence that says: The state auditor shall have such duties as are prescribed by law. Then, we would consider after we've done that, whether or not to add on -- or whether or not to include in the thing -- We would still be debating Mr. Felt's basic motion on the legislative post audit.

Mrs. Babcock.

DELEGATE BABCOCK: Would Mr. Garlington yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: I certainly will.

DELEGATE BABCOCK; In the matter of compromise, would you consider amending the section to read like this? The auditor shall be the issuing officer for all state warrants with other duties and powers provided by law?

DELEGATE GARLINGTON: Well, Mrs. Babcock, this is not for me to say on my own. I inquired how warrants are handled now. All the state warrants, including the ones that

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we all get, are made up on a computer which is down in the department of administration. The computer somehow delivers these warrants to the auditor, and all in the world the auditor does with warrants, is either mail them out or hold them there for personal delivery. So, really, you can say, maybe, that he is the issuing officer for all warrants but, in fact, there is a sort of a use of electronic computer function in state government now, and warrants are simply a part of it. It seems to me, to answer your question specifically, that if the constitution says that the auditor shall be the issuing officer of all warrants, then we probably got to buy him a computer in order that he can carry out the constitutional mandate. This is only a part of the reason why our committee thought this whole area does not belong in the constitution.

DELEGATE BABCOCK: May I ask Mr. Garlington another question?

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Fine.

DELEGATE BABCOCK: Mr. Garlington, doesn't each warrant have a number on it and isn't the auditor responsible for seeing that each number is accounted for? Also, would it be possible for you to go down and get a warrant, the warrant itself, after it has been cashed, from the auditor? Could you go down now and get one?

DELEGATE GARLINGTON: My dear, I don't have the

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foggiest idea.

DELEGATE BABCOCK: Well, I'm certain that you could not without a court order.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. I urge everyone to vote against both Mr. Joyce's motion and Mr. Felt's motion. As Mr. Garlington has pointed out, the matters covered by the proposed section twelve of the Revenue and Finance sections, also mentioned in section thirteen of Revenue and Finance relative to an audit of the investment program. I think the proper place to debate it is when those sections come up, and not now, where we're going to have some problems of what article it should be in the constitution. It should be debated at this time when the accountability comes up and when the audit of the investment program comes up.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Joyce's substitute motion to strike the first two sentences, and add a sentence like the one we adopted the other day, which says, the auditor shall have such duties as prescribed by law, and then tack that on to Mr. Felt's amendment. All in favor of Mr. Joyce's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. All in

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favor, vote Aye and all against, vote No.

DELEGATE ARONOW: (Inaudible -- speaker not turned on.) -- vote on two parts on this matter?

CHAIRMAN GRAYBILL: Yes. We're going to still consider Mr. Felt's motion after this is finished.

Mr. Habedank.

DELEGATE HABEDANK: I wish to be sure on what I'm voting. In voting on this, I am not voting to adopt Mr. Felt's motion.

CHAIRMAN GRAYBILL: No, you're voting to amend it by taking the first two sentences out, and putting another one in, and then debate it again. Have all the delegates voted? Any delegate wish to change his vote? All right, we will close the vote. Fifty-three having voted Aye, thirty-four having voted No, Mr. Joyce's motion prevails, and Mr. Felt's amendment is now amended in that manner. Very well, debate is now open on Mr. Felt's basic motion again.

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, may we now have a ruling from the Chair on the question that was put to the Chair yesterday?

CHAIRMAN GRAYBILL: The Chair is going to rule, subject to your right to overrule, that since Mr. Felt has included this language, in addition to the state auditor, the legislature shall appoint another auditor, that perhaps since

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we're dealing with the topic of auditor in the executive branch, it's fair for the constitution, at that point, to point out that there shall be another auditor somewhere else. So, I'm going to rule that we can debate it and decide it today.

DELEGATE ARNESS: I appeal the ruling of the Chair.

CHAIRMAN GRAYBILL: Very well, Mr. Arness has appealed the ruling of the Chair. That's debatable.

Mr. Felt. Let's not debate it too long.

DELEGATE FELT: (Inaudible -- speaker not turned on.) -- executive article or the article on taxation and revenue, I can see reasons for it coming up in many of them. If the legislative article had not already passed through the body, I think that I would have proposed this to that article. I feel that revenue and taxation could conceivably handle it, but that they would have no greater claim on it than would be the case of the executive article, where we do, as the Chair has already pointed out, have other matters dealing with the same subject matter.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: I feel the Chair should be sustained. I know that throughout our current constitution, and I know in our new constitution, there will be references to what the legislature shall do. I call to your attention Article Eighteen, Labor. The legislative assembly shall provide for department of legislature;under the executive section

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seventeen, the legislative assembly shall provide a seal for the state. I think it's perfectly legitimate to consider this area under the executive article, and I think Style and Drafting should be able to place it wherever it belongs in the constitution.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I'd just like to add a very practical thing. I hope you will be sustained in this, simply because I'm tired of talking about it. I mean by that not that I don't think the issue is important, but I think we've talked about it under disguise, and I would hate to see us pass this thing over with no decision now, and bring up the whole thing again, I don't care where else. Let's decide it now.

CHAIRMAN GRAYBILL: Under the rules, the Chair is allowed to explain his position. My position is similar to the arguments you've made, that, it seems to me that it could be construed as part of the executive article, and that it would be best to decide it now. Then, in my view, Style and Drafting has a free hand to put it wherever it ought to go. So many as shall be in favor of sustaining the Chair, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it. We're now

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debating again Mr. Felt's proposal for amending section four, subsection six, by adding what is now the first sentence, the auditor shall be given such duties as shall be prescribed by law, plus this other language. Is this other language on the desks?

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, I'll read it again. In addition to the state auditor, the legislature shall appoint a legislative post auditor, who shall conduct post audits of financial transactions and accounts of the state, and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions for the state, established by this constitution or by law, and performance post audits thereof. The appoint may be made through a legislative audit committee or as otherwise provided by the legislature. The language has the effect of establishing a legislative post auditor in the constitution.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President. I am inclined to favor this motion, but I object to being asked to vote on something which I cannot look at, which I cannot study. I write shorthand. I am capable of writing probably about a hundred or one hundred twenty words a minute. My speed isn't what it used to be, but I couldn't keep up with the Chair, and I think if we are asked to vote on anything, and when

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something is read that has not been given to us, it should be read at a speed that a person can write in longhand. I think that we're entitled to this.

CHAIRMAN GRAYBILL: I might point out to you, Mr. Habedank, that I think the language was placed on your desk in very similar form yesterday. If you have yesterday's -- isn't that right, Mr. Felt?

DELEGATE FELT: I believe that there were at least four words that would be considered different, and it wouldn't be quite enough perhaps for somebody who wanted to check out exactly. I can assure the Chair and the members of the convention that the essential meaning of this language is the same. This language here is taken primarily from the Michigan Constitution.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: May I ask Mr. Felt to yield to a question?

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I yield.

DELEGATE GARLINGTON: Would you tell us, Mr. Felt, how much of a change would be effected by the mandatory effect of the language you are putting into this amendment, on the present post audit functions, both as to volume and the offices and records that are being handled?

DELEGATE FELT: Mr. Garlington, there would be no

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change in the matters that you referred to. The only change is to make it a constitutional requirement that such a function be continued. They are unable to audit all of them as often as they would like to, because of a budgetary problem, but all of them are available to be audited. I have the present statute here. I'd be glad to deliver it to Mr. Garlington for his examination.

DELEGATE GARLINGTON: I'm asking whether this would substantially increase the burden on the legislative post audit function?

DELEGATE FELT: No, it does not increase the burden. The only thing that could increase the burden would be a larger budget, and then they might have to have a larger staff, and in that sense, a larger burden.

CHAIRMAN GRAYBILL: Ladies the gentlemen, the Chair is bothered by Mr. Habedank's request, because I think it's a legitimate one. Mr. Habedank, I'd have it printed. In fact, I thought about having it printed but the print shop is closed, this being Saturday. So, let's take our pencils and let's write it out. In addition to the state auditor -- now, I'm skipping the first sentence, which is what we passed yesterday. The first sentence says that the auditor shall have such duties as prescribed by law. The second sentence would read: In addition to the state auditor comma, the legislature shall appoint a legislative post auditor, who shall conduct

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post audits of financial transactions and accounts of the state, and of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of the state established by this constitution or by law comma, and performance post audits thereof. I think that may mean, and perform post audits thereof -- no, and performance post audits thereof. All right. I guess he conducts post audits and performance post audits thereof period. The appointment may be made through a legislative audit committee, or as otherwise provided by the legislature.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move as a substitute motion, that -- if you'll follow along with me; we all have it written out. I'll put it in language after I tell you what I'm going to do. I propose to leave in the words, in addition to the state auditor, the legislature. Where it now says, shall, I propose to amend to may. I propose to leave in, appoint a legislative post auditor. I propose to strike all of the remaining language and insert in lieu thereof, the words, who shall perform such auditing -- such post auditing -- duties as are prescribed by law.

CHAIRMAN GRAYBILL: Very well. We'll stand for a moment while we change the tape.

(Tape changed)

CHAIRMAN GRAYBILL: The Convention will be in order.

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The Committee will be in order.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, may I speak in support of my amendment?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE JOYCE: In my humble opinion, we have the issue narrowed down precisely to what I understood Mr. Felt was going to do. That is, namely, make it perfectly clear that just because we have a state auditor, we can still have the legislative post audit and it can't be declared unconstitutional by the supreme court. I am in favor of that. So, I am going to vote in favor of the amendment, but I am opposed to writing all the rest of the stuff into the constitution because it then makes the legislative post auditor into a way bigger job than it is now. I prefer to allow the legislature to expand as conditions warrant in the future, this legislative post auditing process. It will accomplish at least one of Mr. Felt's purposes, which I think is praiseworthy, that the supreme court may not knock out the legislative post audit because of the ill-considered action of this convention of keeping a state auditor in the constitution.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. President. I'd like to offer a substitute motion to the substitute.

CHAIRMAN GRAYBILL: No, you may amend the substitute

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motion but you can't offer another substitute. You might state it and we'll decide whether --

DELEGATE BABCOCK: I'd like the words to read, the auditor shall be the issuing officer for all state warrants with other duties and powers provided by law.

CHAIRMAN GRAYBILL: I think, Mrs. Babcock, that's not an amendment to the Joyce language and so, the rule is that we don't have two substitute motions. When we finish adopting or throwing out Mr. Joyce's language, I'll get you back and you can take that up. We're on Mr. Joyce's language, which changes the shall to may. In addition to the state auditor, the legislature may appoint a legislative auditor who shall perform such post auditing duties as shall be prescribed by law.

Mr. Felt.

DELEGATE FELT: I would support the amendment offered by Mr. Joyce. It does do, as he said, make it certain that the supreme court, at least, cannot declare unconstitutional the effort of the legislature to have post auditing. If the legislature, for some reason, did not appropriate funds to carry it out, or if they failed to act on it -- and I guess this is a problem we have to leave to the legislature itself. I am satisfied with the essential elements that are still retained and I hope -- I know -- that if we ever get back to my motion, I'm not going to make any speech at all on that. I

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hope we can move it along.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: May I ask Mr. Joyce a question, please?

CHAIRMAN GRAYBILL: Mr. Joyce, will you yield?

DELEGATE JOYCE: Yes, very gladly.

DELEGATE BABCOCK: If your motion prevails, would that prevent the auditor from taking care of these warrants as he does now?

DELEGATE JOYCE: It wouldn't prevent him, but it wouldn't require him. We've already beaten that motion as I understand it, Mrs. Babcock. The legislature can let the auditor continue to take care of the warrants for time in memorial, just as he has in the past, whatever care he does take of them. But, it wouldn't require it.

DELEGATE BABCOCK: Thank you.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Just a point of inquiry. If there is a vote on the Joyce amendment, does that carry the Felt amendment, or do we get back to that?

CHAIRMAN GRAYBILL: No, we're still going to give you a chance to consider it. We never cut off debate if we can help it.

Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. I think at long last,

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we're on the right track. We do have the legislature empowered to set up some nice, internal controls. We have a treasurer. The legislature may let him take care of the money. They don't have to. We have an auditor. The legislature may make him responsible for the books and records. At this point, if we pass the Joyce amendment, we will have an outsider who will come in and see that the treasurer has taken care of the money properly, the auditor has taken care of the books and records, that the assets are still here, and I don't think it's too much of a step forward that it will upset the voters, because the legislature may still do it. I support Mr. Joyce's motion. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, will Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I will.

DELEGATE BLAYLOCK: Mr. Joyce, I'm not a lawyer so I don't know what the answer to this question is and I ask you. You state the fear that the Supreme Court of the state of Montana may declare a legislative post auditor unconstitutional. I can't understand why they would do that. Are you saying that the members of the legal profession -- that we have to protect ourselves from the supreme court?

DELEGATE JOYCE: What I'm saying is that the argument

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can be made, and with some plausibility, that because the present state constitution says that we shall have a state auditor, the supreme court could say, well, that means that he is the auditor of the state. Then if the legislature undertakes to appoint another auditor, that's in violation of the constitution. I want to make it perfectly clear that we're giving the state auditor duties prescribed by law. We're using a bad word for what he's currently doing, but we're doing it, and I've lost, and there's no use rehashing it, but we are saying that we're going to have a state auditor, who will have duties as prescribed by law. Then, we're making it perfectly clear that we can have a legislative post auditor, so they'd be no possibility of anyone -- even the most ingenious lawyer -- of arguing that the legislative post auditor function is unconstitutional. I further think, in answer to your question, that if my amendment prevails, that the rest of Mr. Felt's proposal will go down the drain in that we won't get back to it. Isn't that correct?

CHAIRMAN GRAYBILL: Are we ready to vote? All those in favor of Mr. Joyce's substitute motion, which is that the second sentence would read: In addition to the state auditor, the legislature may appoint a legislative post auditor who shall perform such post audit duties as shall be prescribed by law. All in favor, say Aye.

DELEGATES: Aye.

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CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Now, we're on Mr. Joyce's amendment, which I just read, that the legislature -- that in addition to the state auditor, the legislature may appoint a legislative post auditor who shall perform such duties as shall be prescribed by law. Does anybody care to amend that? Why don't you move that when this body arises, and then we'll debate that?

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section four, subsection six, that it recommend the same be adopted as amended. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I have nothing further to say. I hope no one else does either. (Laughter)

CHAIRMAN GRAYBILL: Never mind those commercials. Now, who else --

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. I would like for Delegate Harper to read a section of the legislative article, if he would please.

CHAIRMAN GRAYBILL: Delegate Harper.

DELEGATE HARPER: I know which section he means, since I've been prompted. I think Delegate Martin wants us

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reminded that in the legislative section ten, subsection five -- I don't think you need to turn to it -- the legislature may establish interim committees which may meet and exercise all legislative authority delegated to them.

DELEGATE MARTIN: I wonder if Mr. Joyce would yield to a question.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I yield.

DELEGATE MARTIN: Don't you think under that article, that the constitutional provision is made in the new constitution, which would accomplish the same thing as your motion?

DELEGATE JOYCE: Not necessarily, no. That authorizes legislative interim committees. That makes it perfectly clear that they're now constitutional. The post auditor isn't really a legislative interim committee at all. He's an employee of the legislature. I don't think that necessarily accomplishes it. That's my opinion.

DELEGATE MARTIN: I rather hate to disagree or to take issue with my chairman on this matter, but I opposed reconsideration a couple of times this morning. I think once we debate something, we ought to let it go. In my opinion, this thing is statutory and not constitutional, and I hope the motion is defeated.

CHAIRMAN GRAYBILL: Mr. Mahoney.

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DELEGATE MAHONEY: Mr. President. I hope that somebody don't come back in here and decide we've got to put in the constitution the legislative council is constitutional. You start opening this thing up and you start to wonder just where we're going to stop. Now, say that the legislature, in its wisdom, and the governor decided to have some other department do the auditing, and they would abolish this department. They can't do it. I just question whether we want to go in here and single out one thing in the constitution that says, you shall have a legislative auditor. If it's good, they'll have it. I think we'd be opening up a gate here.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: May I ask Mr. Mahoney a question?

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Yes.

DELEGATE JOYCE: Doesn't my amendment say that the legislature may establish a post auditor?

DELEGATE MAHONEY: I'm afraid, and I've always been afraid, of may and must and shall because it all depends on who writes the opinion. I've seen some terrible opinions written on may around here.

DELEGATE JOYCE: At any rate, you do concede that it does say may?

CHAIRMAN GRAYBILL: All right.

Mr. Leuthold.

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DELEGATE LEUTHOLD: Would you read the whole section again so we can fully understand it?

CHAIRMAN GRAYBILL: The issue is on Mr. Joyce's substitute motion as amended. The state auditor shall have such duties as are provided by law. In addition to the state auditor, the legislature may appoint a legislative post auditor, who shall perform such post auditing duties as shall be prescribed by law. So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. That takes care of section four, subsection six. Are there other --

Mrs. Warden.

DELEGATE WARDEN: Mr. President. I don't know whether I'm in order making this or not, but could there be a motion to suspend rules and reconsider section one?

CHAIRMAN GRAYBILL: There could be a motion to suspend the rules and reconsider section one, yes.

DELEGATE WARDEN: May I make it?

CHAIRMAN GRAYBILL: Let me think a minute. Let's see what happened here. Mr. Vermillion moved to reconsider section one, sub one, and it was defeated. You want to make a

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motion to reconsider section one, sub one?

DELEGATE WARDEN: Yes, I voted on the prevailing side.

CHAIRMAN GRAYBILL: All right. To do that, you have to make a motion to suspend the rule.

DELEGATE WARDEN: May I do so?

CHAIRMAN GRAYBILL: Yes.

DELEGATE WARDEN: Rule Twenty-seven.

CHAIRMAN GRAYBILL: Mrs. Warden wishes to make a motion to suspend the rules in order that she might reconsider a second time, section one, subsection one. So many as are in favor of her motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right. The Noes have it. Mr. Mahoney, do you have an objection?

DELEGATE MAHONEY: I think, and I want this issue cleared up. I don't care how the vote goes. If we're going under the rules, and it says you can't reconsider, reconsideration-- If you're going to turn around and suspend rules -- the same thing. I think we're going to get into a lot of trouble around here, Mr. President, in the future. And, while I don't know anything about -- more than that -- I think we must establish a principle here. If we're going to get around a rule by suspending the rule, then I think this is

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what we'd be doing. I would question it. I think we ought to be careful of this.

CHAIRMAN GRAYBILL: I think you're right, and I think we did sustain the fact that we're not going to suspend the rules easily. Are there other motions to reconsider? The Chair has none. The Chair has held up, based on the stari decisis -- that's a word that the cowboys down in Power River use -- (laughter). Based on stari decisis of that little problem Mr. Blaylock had the other day, the Chair held up a notice from the auditor's office that it will be open from ten until two for pay purposes, while we were debating that matter.

Mr. Joyce.

DELEGATE JOYCE: Do I take it, Mr. Chairman, we are now completely through with the executive article, sections one to fourteen as amended?

CHAIRMAN GRAYBILL: Yes. Would you like to move that when this body does arise and report, that we should adopt that?

DELEGATE JOYCE: Yes, I would. I just want to make one final -- and then I'm going to be quiet. On behalf of the Executive Committee, we appreciate the wisdom of the convention in the conduct of what the article has been. I think it appropriate at this time, however, that I make this observation. I think that the record should show that the committee

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and the convention are obligated to Delegate Garlington and Roeder for the fine draftsmanship, which I think it was. I also, as the chairman, want to say that I enjoyed working with the entire committee, and that while the minority wasn't more than the majority, I congratulate them for it. I think that we conducted ourselves honorably and sociably and I just wanted the record to so show. With that, Mr. Chairman, I move that when --

CHAIRMAN GRAYBILL: Mr. Joyce, you don't need to move that. Mr. Eskildsen is going to move. Just a minute, Mrs. Van Buskirk, for what purpose do you rise?

DELEGATE VAN BUSKIRK: Mr. Chairman. I wonder if I would be in order now to speak on my vote last night?

CHAIRMAN GRAYBILL: Mrs. Van Buskirk, explain your position and the Rules Committee can listen. I think we're in order, before we come out of the Committee. Go ahead.

DELEGATE VAN BUSKIRK: I would like to say that I voted Aye and I wanted to vote Nay on the Davis amendment. I was called out of the room on the telephone, and when I came back in, I was misinformed on what we were voting on, and I voted Aye, and I would like to say that my intent was to vote Nay.

CHAIRMAN GRAYBILL: On the basis of mistake, rather than on the basis of a change in mind. This is on Mr. Davis' motion on what? Eighteen year old vote?

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DELEGATE VAN BUSKIRK: Yes, that the age limit be changed to twenty-five.

CHAIRMAN GRAYBILL: Right. She voted Aye and she wished to vote No. Can she amend the journal to show that? All in favor of letting the journal be amended to show Mrs. Van Buskirk's No vote --

Mr. Mahoney.

DELEGATE MAHONEY: I think the rules say that once it has been announced, we can't change it. Now, if she wants for the record to just let the record show that she just voted wrong, that's all right. But, to ask you to go back and change the vote, I think we would be in serious trouble, Mr. President.

CHAIRMAN GRAYBILL: I think you're right, Mr. Mahoney. The Chair is going to accept your help here. Mrs. Van Buskirk, let's say for the record, that you made a mistake and you voted wrong. We'll put it in the record, but if we let you change your vote, then anybody could go back and change a vote and the first thing you know, one of these votes would be overturned, like that forty-eight to forty-eight one. So, the record will so show, Mrs. Van Buskirk.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. President. I'd like, on behalf of the minority report, to thank our chairman, Mr. Joyce, and the rest of the members. I think that it was a true

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example of democracy and nonpartisanship in action. We certainly appreciate all the courtesies they showed to us throughout this executive report.

CHAIRMAN GRAYBILL: The Chair would like to point out that executive got through in two days, if you watch the clock and if we hurry.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I move the Committee of the Whole rise and finally report, and refer the executive proposal to Style and Drafting.

CHAIRMAN GRAYBILL: All those in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered. We will sign the report and go into convention.

PRESIDENT GRAYBILL: The Convention will be in order. Mr. Clerk, will you read the report of the Committee of the Whole? Unless objection is made, we'll read today's Committee of the Whole report only.

CLERK SMITH: Mr. Chairman. We, your Committee of the Whole, having had under consideration Report Number Four of the Committee on Executive recommend as follows: Delegate Nutting, having voted on the prevailing side in adopting

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section five, subsection one as amended, in the Committee of the Whole on the previous day, moved that the Committee reconsider its action. Motion carried. Motion of Delegate Arness to restore the language in section five, subsection one, as proposed in the majority, be not adopted. That section five, subsection one as amended in Committee of the Whole on the previous day be adopted. Delegate Vermillion having voted on the prevailing side in adopting section one, subsection one in the Committee of the Whole on the previous day, moved that the Committee reconsider its action. Motion failed. Murray having voted on the prevailing side in adopting section four, subsection six in the Committee of the Whole on the previous day, moved for reconsideration. Felt requested a roll call vote. With sufficient seconds, the motion to reconsider passed by the following recorded roll call votes, Ayes Fifty, Nays thirty-nine. Joyce's substitute motion to amend Delegate Felt's amendment to subsection four of section six carried as follows: Delete the first two sentences of proposed amendment and replace with the words adopted yesterday which are, the auditor shall have such duties as prescribed by law. Delegate Arness asked for a ruling of the Rules Committee requested yesterday as to whether Delegate Felt's amendment may be considered. The Chair ruled that it could be discussed at this time. Delegate Arness challenged the ruling. The Chair's ruling was sustained. Delegate Joyce's

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substitute motion to amend further Felt's proposal as follows: that the remainder of Felt's amendment after the first sentence read as follows: In addition to state auditor, the legislature may appoint a legislative post auditor who shall perform such post auditing duties as shall be prescribed by law, be adopted. That section four, subsection six be adopted as amended. Delegate Warden moved to suspend Rule Twenty-seven so that section one, subsection one could be reconsidered. Motion failed to carry. That the Committee rise and report and refer the executive proposal to Style and Drafting. Signed, Graybill, Chairman.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: All those in favor of the adoption of the Committee of the Whole report, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Chair will take a division on that. All in favor say Aye -- vote Aye on the voting machines, and all opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? Very well. The Chair will close the vote. Sixty-six having voted Aye and two having voted No, the Committee of the Whole report will be

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adopted, and the Chair will refer it to Style and Drafting.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: You've heard the motion to move the Convention back into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: Very well. The motion is adopted. We'll be in General Orders in the Committee of the Whole on the legislative article. Mr. Brown will take the Chair.

(Committee of the Whole chairmanship assumed by Mr. Brown.)

CHAIRMAN BROWN: Delegates, the next order is the consideration of the judiciary. We've talked to the minority and the majority people on their proposals and they are five to four on this. If we would start on the majority proposal, it would become very involved because the two proposals are very different. So, with the consent of the delegates, we'll have the majority give their reasons for the majority in a short discussion of the same. Then, we'll hear the minority and they will discuss them. Then, we would like to have an

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informal consensus of the delegates, as to whether they'd rather go down formally the majority report or the minority report. If there's no objection, we'll have an informal discussion along those lines. There being no objections, we'll recognize Mr. Holland. We'll recognize Mr. Graybill.

DELEGATE GRAYBILL: Mr. Brown, it has been pointed out to me that the rules require that we take up Style and Drafting reports when they are available. There is a Style and Drafting report available on General Government. I'd like to move that we postpone it until after we've considered the judiciary.

CHAIRMAN BROWN: You've heard the motion of Mr. Graybill. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN BROWN: Opposed, No.

(No response)

CHAIRMAN BROWN: Motion carried.

Mr. Holland.

DELEGATE HOLLAND: At this time, I'll move to suspend Rule Fifty-one on page twenty-two wherein in Committee of the Whole consideration, proposals will be considered debated and amended by the Committee of the Whole in order of reference and placed on General Orders of the day. The Committee of the Whole shall debate and adopt, by section, the committee proposal. As Mr. Brown has indicated earlier, there's a

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majority report here and a minority report. The majority report, I think, is thirty-three sections, if I remember correctly. The minority report is thirteen sections and these sections aren't comparable. It would be impossible to amend it back and forth. With the consent of all of the Judiciary Committee, it's our desire to inform generally the delegates of the nature of the plans, and then ask the delegates to give us a tentative vote, and then roll section by section, with either the majority or minority. With that in mind, I'll rule that that rule be suspended for this debate.

CHAIRMAN BROWN: You've heard the motion of Mr. Holland. With no further discussion, will all in favor say Aye.

DELEGATES: Aye.

CHAIRMAN BROWN: Opposed, No.

(No response)

CHAIRMAN BROWN: The Ayes have it.

Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. The committee was a nine man and woman committee. The majority plan was adopted by five people including me as chairman. The minority -- The other movers on the majority side are Mr. Aronow, Mr. Schiltz, Mr. Eskildsen and Mr. Hanson. The minority plan was in large part, written by Mr. Berg. He, with the other delegates, I expect, will discuss his plan. He was joined in the

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minority by Mrs. Bowman, Mrs. Pemberton and Mr. Melvin. Basically, what the majority has done is take the judicial article, as it now is in the constitution, and largely readopted it, except in such places as we felt there was a need for a change. The minority, on the other hand, have completely rewritten -- made a brand new judicial article. While it contains some things that are in the present article, it's an entirely new language and new sections. Before we get into debate, I've taken certain positions in this convention. I've voted against some people's pet proposals and I want you to know that I've been thinking it over, and I was dead wrong. If you can bring your motions up on a reconsideration, I'll vote with you the next time. (Laughter) I think I'm going to have to pay through the nose for some of the things I've done. Many of the delegates here have spoken to me about -- I think it's covered in the minority plan, in their comments. They have a very short, brief plan. It has thirteen sections, which I hope is unlucky, but without any question, it is quite brief and quite concise. On page forty-six of the comments, Mr. Berg and the other members of the committee, make this statement. Every delegate in this convention was requested by some of the electorate to assure brevity and simplicity in any constitutional revision, so that all could understand. I didn't run over in Bozeman, but I didn't have one of my constituents say, Dave, when you go over there, be brief. Some

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of them told me to keep my mouth shut, but they didn't say anything about being brief. Maybe it is a good thing and maybe it isn't, but there's no question that theirs are brief. I suppose the model for brief constitutions is the United States Constitution, which is about as brief as you can get. I know the United States Constitution has always been ranked up there with motherhood and apple pie, as one of the untouchables. I'm going to say something critical about it. It's too brief and it's too short. It's the type of constitution that in 1890, nine judges got together and decided that separate and equal facilities satisfied the same constitution, and in 1950, in the Brown case, they got together and decided that separate and equal facilities aren't good. In the early days of the New Deal when we had a conservative court, the measures were cranked out by the democrats, and time after time they were ruled unconstitutional. Although President Roosevelt was accused of trying to pack it, he never got to. But, as the resignations and deaths changed the complexion of the court, practically the same laws would come back and would be found constitutional under the same old constitution. Now, one thing about being brief -- you just don't do the job in my estimation. When you have a constitutional provision, the resevoir of powers are with the people and, naturally, to have a functioning society, you're going to have to give some powers to the legislature, and some to the court, and some to the

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executive. But, you only want to give them so much power as you need to function, to keep our society running. In my estimation, we've got to be very careful of our resevoir of powers. When we do give a power, I think we should fence it in. I think we should make it very clear what it is, and make it very clear we don't want to give up any more power to these bodies than we intend to. If we have to use a double negative to let these people know that the people are retaining the power, I don't see anything the matter with it. So, I don't think brevity is quite as important as some other delegates do. I'd sooner say no in clear, undistinguished, long sentences than to leave any doubt about whether I was saying them. Now, I want to come to the basic differences between the two plans. In the majority, as I say, we took the old constitution, heard our testimony, decided there were some places that needed some revision, and made some revision. The minority has written an entirely new constitution. Now, the problem with writing an entirely new constitution -- that is in the judicial article --, I think was dramatically shown to us in the Montana plan. I don't know if all of you have ever read this, but it was distributed to everyone early in the game. This was written -- The Montana Citizens Conference For Court Improvement Plan. It was written by the law school professors. Three of them came up and spoke to us. Dean Sullivan, a fine student of the law; Professor Mason who I've

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always respected as having the finest legal mind in the state, and I still respect him; Mr. Crowley, who is a very excellent man, and in collaboration, they wrote this. When we got up here and asked them questions about this plan, there were so many holes in it, so many loopholes, so many things that nobody in the committee wanted, that to this day, there isn't one supporter for the Montana plan who's supporting it. The supporters of the Montana plan have all gone over with Mr. Berg's plan. The problem is that when you write a constitution, you're not like that man that's in that commercial that went into the restaurant, and he said to the waiter, what is that? Try it, you'll like it. But, what is it first? Try it, you'll like it. But, what is it? Try it, you'll like it and he said, I ate it and I thought I was going to die. So, I took two Alka Seltzers. The problem with adopting the minority plan, is that they don't have any Alka Seltzers. You know, my candidate for the fool of the year was the man who proved that the parachute was a safe invention, because he took an awful chance. When you take a brand new judiciary article that has never been tried in any state, that has been written by Mr. Berg, and I have great respect for Mr. Berg. He has written this plan. He has said, all right, here it is, but we don't have any Alka Seltzers, we don't know for sure if the parachute is going to open, but try it out because it's free and it's concise and it must be better. Now, I say to

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you, that for seventy-three years we've had the judicial article that the majority is submitting to you. It has been tried; it has been found wanting in certain respects. As I've stated, we've made certain changes in this, but they are changes that were brought to our attention by all of the witnesses we heard, and which we tried to correct. Now, get down to the basic differences The majority plan -- in the majority plan, we provide for the election of the judges, both district and supreme court. The minority plan provides for the appointment of judges. In the majority plan, we retained the justice of the peace. The minority plan does not do so. In the majority plan, we continue to elect the clerk of the supreme court. The minority appoints it. In the majority plan, we do not give the court any rule making power. The minority plan does something, and I'm not quite clear what it is, but I'm sure Mr. Berg will be able to explain to you what he means by the rule making plan that is incorporated in there. In the majority plan, we provide nothing about this qualification of judges, and the minority plan does. Now first, and I think of primary importance here, is this matter of the election of judges. Mrs. Babcock said it far better than I could about all of the various ramifications about taking these people out of the constitution, but the commission did an outstanding job in preparing for us. There's only one thing. They went out and researched and prepared so much material that I per-

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sonally haven't been able to read it all. Number Eleven, which is suffrage and elections, is an excellently written article, and I do wish that everybody had had the time, and I hope they have read it, because it has some excellent material in it. It traces the history of elections in not only the state of Montana, but the United States and even going back to the days of ancient Greece. Everybody didn't always have the right to vote. Back in the time shortly after the Revolution, some of these states had requirements. A man had to own land; a man had to have so much money. We had the poll tax; of course, women couldn't vote; we had disqualifications of negroes in effect, and Indians. All of this has been now fought down. First, a man now doesn't have to own property. That was one of the first to go. The second thing that went was, of course, the Nineteenth Amendment. Women had the privilege. Then, we had the amendments for color being a bar and, of course, artificial barriers were put there and it has just been within the last few years, that that has gone. Just within the last year, I think, the age for voting has now come down to eighteen. We're coming to the point where actually all of the people can now speak by vote, but now, we meet in convention. We've given all these people their vote and we start out by saying, all right, you've got the vote, but we're going to take away the offices you're going to vote for. I think this is basically wrong. I think it's a step backwards. I think I've made

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myself clear right along, that I consider this vote an extremely important constitutional weapon. It's the only one the average citizen has. I very, very much feel that the election of judges is something that is vital to this constitution. Back in the days after the Revolution, most of the judges -- as a matter of fact, I think in every state the judges were appointed in some manner, many times for life. Back about 1820 or thereabouts, every time a legislature would do anything that was liberal, the courts would find some precedence to throw it out on. They speak of it, I think, as the Jacksonian Revolution, where the people got so sick of the courts being reactionary, they went out and provided for election of judges. Most of the states, from then on in, and right now, have provided for the election of judges. North Dakota, I saw the other day, resisted the effort for the appointment of judges. But, within the last few years, there has been a rash of attempts to take the election of judges away from the people and go to the appointive system. Now, so you get a little background on this. This is being pushed in large measure by what they call the American Judicature Society. One of the officers came out and testified before our committee. Now, the American Judicature Society, in case some of you people aren't familiar with it, bears the same relationship to the American Bar Association as the Anaconda Building Supply Company does to the Anaconda Company in this state. They are one

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and the same, just a different branch. Now, they have been going around to the various state constitutions, and to the various organizations, attempting to convince the people of the United States that they're not smart enough to vote for judges. It's only us lawyers that are smart enough to have this power. I don't really agree with the American Judicature Society. I think, without any question, that when we do get down to elect, we pick a superior judge. The minority, I think felt -- originally, in the Montana plan, it was a straight selection of judges with a confirmation election without an opponent. They just felt that would be too bitter a pill for this convention to swallow. So, they made some vital changes in it. They say when there is a vacancy, there will be merit selection. That's the important point. In the next term, the man can have a contested election and, thereafter, he will have a uncontested election. Besides that, it provides for confirmation of that judge by the senate. Now, what have they done? They've provided for confirmation; they've provided for elections. Why, in God's green earth don't they just provide for an election? Because the key issue is, the minority wants the appointment of judges by a select committee. It comes down to that. That pill, as I say, was too bitter to swallow. So, now, they sugarcoat the pill so you don't taste it. They provide for confirmation by the senate. That is one layer of signature. They provide for a contested

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election afterwards. That's another layer of signature. Then they provide for an election every four years. That's another layer. The only trouble with the sugarcoated pill now, is that it's too big to swallow. It's as big as a baseball because, why would you do all of this if you really thought that the important thing wasn't to convince this body that they should vote for a constitution with an appointed judge? This is the whole idea behind the thing. I submit to you that the people of this state want to elect their judges. If we come out of here with an appointive system, this thing alone, in my estimation, could bring down the whole constitution. In the slip which was distributed yesterday, I believe, about the various news items -- distributed on February 25th -- on the third page, -- and I'll tell you, I had nothing to do with this poll -- on the third page, University Class Polls People on CON CON Issues. It states this: Between February 7th and February 22nd, students in a Political Science class at the University of Montana, under the supervision of Dr. Robert E. Engle, surveyed one hundred eighty-nine registered voters in Missoula to determine their attitudes toward certain Constitutional Convention issues. Among the things was this: Should judges for the supreme court and district courts be appointed by the governor, rather than by election, as at present? Yes, forty-three, No, one hundred twenty-five. If this poll were accurately conducted, and I certainly have no reason to think

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it wasn't, you're flying in the face of a three to one majority. Now, that's what the people think. Now, let's get down to what the lawyers think about it, because the President of the Montana Bar Association came up here and testified in its behalf. While he didn't poll his organizations, his Executive Committee was in favor of the Montana plan. Yesterday, there was a letter addressed to Mr. David Holland, Chairman, Judiciary Committee from the Montana Student Bar Association dated February 24, 1972. Now, that letter wasn't sent to me; it was sent to Catherine Pemberton. At the request of some of the minority, this was printed and placed on your desks. They found out down there that the law students at the University were for the majority plan -- that would be the one I'm on, sixteen -- and for the minority, sixty-seven. All of which, I suppose, is to convince you overwhelmingly that somebody is in favor of the minority plan anyhow. I didn't give that all the big weight that evidently some of the minority did because we run into these law students all the time. When they go to work in our office, we know they really know the law, but we don't send them up to the Supreme Court of the United States to argue that first day. Generally, we send them up to file some papers. About the first five or six times we send them to file papers, we send a stenographer with them so they don't get lost. It's only about four or five years later that they start going up and telling the supreme court their business.

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Now, let's get to what the lawyers of the state of Montana think. At the request of the full committee, the lawyers were polled. We used the law school list. The lawyers of the state of Montana -- this would include both practicing and non-practicing lawyers, by the way -- voted for the election of supreme court judges by a margin of two hundred fifty-six to two hundred forty-one. They voted for the election of district court judges two hundred fifty-three to two hundred thirty-seven. Now then, another organization was polled -- that's called the Montana Trial Lawyers. I'm a member of that organization so, of course, I think it's more significant because I'm a member of it. But, there's one thing about the Montana Trial Lawyers. They all make their living in what we lawyers romantically call the pit. That is, they are in court constantly. That's the way they make their living, trying cases in court. You better believe, that when you do that, you know all about judges. All the judges in the state always sit up like Mr. Brown does, right up there on an elevated platform Whenever my head goes back, because I'm always looking at judges, it's yes, sir and yes, your honor, because I'm telling you, I want a good judge up there. This is where, together with many of the lawyers here in the convention, I make my living and I'm real interested in getting a good lawyer to be judge. I'll just tell you what the lawyers that make their living in the pit think. They voted for the election of the

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supreme court justices seventy-eight to thirty-four, and for the election of district court judges -- those are the judges they see every day -- eighty-two to twenty-nine. So, we got the law students for the minority plan. We got the general lawyers, whether they make their living in court or not, are for the election of judges, and we got the trial lawyers nearly two to one for the election of judges. More important than any of those three, we've got the citizens of the state of Montana who don't want to be put down as not being intelligent enough to pick their own judges. They want to vote for them. I suggest to you that, with everyone but the law students, we should go ahead with the election. The second main difference is in the JP. Everybody who testified, or who was polled, were near unanimous for the abolition of the justice of the peace from the constitution. When I came over here, I had considered the matter a good deal. As a matter of fact, I served on the Montana Bar Committee involved in the matter for many years. I was more or less inclined to think they should come out. But, as we begin to get some testimony from some of these lawyers from the small towns -- some of the JPs from the small towns -- I begin to appreciate more and more, that there's just no way that this system of ours in the state can work out without a JP or the equivalent of him, whether you call him a magistrate, or whether you call him the chief justice of the supreme court. We still got to have somebody

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out there in each county to take care of the JP function. So, we left him in, but not left him in the way he is now. The present law, as it is interpreted, requires that there be at least two townships in each county, and that there must be two judges for each township. Now, in a small -- I'm speaking small in area -- county like Silver Bow County, that means we have four judges. Frankly speaking, that's too many because I don't think they have that much workload, but the constitution says we shall have them. That's the first thing we changed was the requirement on JPs. Now, we require only one in each county. There can be more if circumstances dictate, but we still make that basic requirement. The second thing we have done is we removed the limits from his jurisdiction. It used to be, in the old constitution, that he had a limit of three hundred dollars on the cases. This prohibited the JP from conducting what we call the small claims court, where the limit might be raised to a thousand or even three thousand dollars, and where citizens without lawyers, can go in and get the smaller matters litigated. So, we've taken those jurisdictional limits off, so even though we still call them JPs, he can actually be a small claims court. We've also made it clear in the constitution that we expect that lawyers can fulfill the position and practice in other levels of court. This way, we think the qualifications can be brought up. Now, in your small counties, there just aren't that many lawyers,

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and we have provided that. We haven't limited it just to lawyers occupying the position. But, we have included and upgraded the position by requiring training. So, while we kept the JPs, they are so modified that I don't think that they're going to be the same court, and we hope we've taken the abuses out of the system. The third major difference between the clerk of the supreme court -- between the two plans -- are we provide for the election of the clerk of the supreme court, which is consistent with our whole article. They provide for the appointment. Now, for some reason, and I never have had it explained to me, but for some reason, they provide for the appointment of the clerk of the supreme court, but provide for the election of the clerk of the district court. We provide for the election of both. I think it's important that we continue to elect them. The third thing is on the problem of rule making power, which is covered in the minority article. Now, when you start talking about a rule making power, you start talking about a court making rules, a court making law. Now, when a legislature makes law, as you well know, you have the executive to veto it. If the executive doesn't veto it, we have the courts then to look it over and say, you made a law here which is unconstitutional. It shall not be enforced. So, when the legislature makes law, it has those safeguards. When the courts make law, there's no executive to veto it. The courts decide whether it's constitutional, and we're back

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to the old system where the court is throwing the pitch and then running back behind the plate and saying, strike one. It just doesn't belong in there. I'm not familiar with the system at all. Now, I'm not against the supreme court having some rule making power, but I want it the way it is now under the present constitution. The way it is under the present constitution, the legislature passes a law delegating to the courts the right to make rules. The legislature retains the right to take that power back, or to say to the court, you've gone too far; this rule will not be enforced. So, now we have the safeguard. The legislature has the power to let the court do the work, but they supervise it and can, in effect, veto it. This is the rule the majority likes, and this is the way it is in the present constitution, and it works out just fine. I really don't know about this. Part of the problem I have with the minority plan is they've written it up, and I'm not real clear what they mean by it. This is what I mean about taking on the task of writing a whole new judicial article, because it has never been interpreted, and what is it going to mean? This is what they say in section one on page forty. The supreme court shall have such power to make rules of procedure as may be provided by law. Now, what does that mean? I'm not sure. Is the court -- and they're the ones that are going to interpret it; the legislature is not going to interpret it, and the executive is not going to interpret it. Does

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that mean that they have absolute authority to make rules? Or does that mean that they can make the rules that the legislature tells them they can make? Now, there's no question under the present constitution. No doubt about the fact at all, that the legislature can and has delegated that power to the courts. If this is a good rule, why not leave it like the present constitution? Why put this in, that I think raises a very difficult question of interpretation? As they say in the game, why open this can of worms? Then, we go to the previous sentence above there. The supreme court may make rules for the practice of law. Now, what are rules for practice of law? Does that mean that they will have the authority to discipline lawyers, to decide which men shall be allowed to practice law? Or does that mean that they will have the supervision of lawyers to tell them what fees they will get? I don't know what it means, but it certainly has me extremely concerned. I like to know exactly what somebody means when they put it in there. We have the matter of disqualification of judges. Now, to fill you in on disqualification of judges, there's nothing in the original constitution about disqualification of judges. There's no need to be. Back in the time of the war of the copper kings, the Anaconda Company shut down the state of Montana until such time as the legislature came over and passed a law. They had to call a special session. They came over here and passed a law so they could disqualify Judge Clancy. They shut down

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Butte, ten thousand men out of work. The governor held out for a month, but the pressure got too big, and he called the legislature over. They went right through the hoop and they passed the law for the Anaconda Company. That law was declared constitutional. In other words, this is an authority the legislature has. So, I say to you, if the legislature already has this power, then why are we going to write a judicial article including the disqualification of judges? We have a disqualification of judges. The statute is clear. It has been interpreted many times, and why fool with it? I just don't know, but in section nine, and I'll read this to you -- The legislature shall provide for disqualification of judges at any one or all of the inferior trial and appellate court le-els. Now, that's mandatory; they have to provide for it. Now, what do they mean by that? Let's go to their comments and let's see what they mean by it. They say this. It is our intention that the basic right of a litigant to be assured an impartial trial at all levels of the court. It is noted that although disqualification procedures for lower courts is provided for in the statutes, the supreme court has remained exempt. By this provision, the supreme court judges will also be subject to similar requirements. Does this mean that the legislature must now bring in a statute that all of the judges that you feel should be disqualified? In other words, the entire supreme court could be disqualified? Does it mean

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that every district court judge can be disqualified? I don't know what it means, and this is what I protest about writing a new judicial article. If this is passed, it will be a subject of fruitful litigation for the next fifty years until we finally find out where we're at. Now, on the majority side, we had some real problems about this. Go over and take a look at our district court jurisdiction, our number nine. It's a long, windy, over a page article. We got in there, and we've got some purists on our side, and they said, O, let's get rid of all that junk. I don't like to get rid of all that junk because it has been working real well for seventy-three years. We've heard testimony from so many witnesses that I lost count, and not one person came in and said there was anything wrong with the district court jurisdiction. But, I'm willing to go along. All right. So, we took the Montana plan. They have something in there about justiciable benches. They have a nice short one like this. I said, well, let's call the professors down at the law school, and find out if we're safe because I don't want to be facing a whole new battle, on whether a court has jurisdiction of this, or whether a court has jurisdiction of that. So, we called Professor Mason. He said, don't worry, Dave, don't worry. It's a fully defined legal term. Keep things just the same way, and it's nice and short. Fine, we're going to incorporate it in. And then you know, the first thing, Mr. Berg went out and did a little re-

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search, which I should have done. The first thing, Mr. Berg did a little bit of research and, by gosh, here's two state courts that have held that this thing -- nobody knows what it means, and it's not a well defined legal term, and we darn well were liable to get things mixed up if we went ahead and fought it out. Now, I say to you, that if none of the witnesses want things changed on a particular article, then even though it is long, decided to leave it alone. I'm saying to you that if the minority proposal is finally adopted by this body, you're taking a whole new keg of nails on. I don't know how the court is going to interpret it, and I know that Mr. Berg thinks he does, but, by gosh, I've seen courts do odd things. I say you're way better off to stick with the old tried and true. There's just one more thing I want to cover about this. We had a good many protesting delegates who thought the courts weren't all they should be, and the majority contains several members who think that. Their kicks were that out of twenty-eight district judges of this state, nineteen have been appointed by the governor -- unfettered appointment, he didn't have it confirmed by anyone, and those people have been continued in office. In other words, even if we have an election, it's pretty tough to beat a judge. The same thing is true of four out of five supreme court judges, and another evil -- I don't know if it's an evil; maybe it's a good thing, I don't know. But, in any event, we had one situation one time where

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a man died or resigned. A supreme court justice was appointed. He had failed at the previous election but, of course, he was in and he wasn't going to get beat, and he was reelected a couple of times. He wanted to retire, but he didn't retire. He didn't say, step aside and let's have an election. He ran and then about a year or so later, he had a governor from his own party -- although he's nonpartisan and the governor was of a different party -- Anyhow, the governor from his own party -- Then he resigned and then the governor had to put somebody else in there, and that man has been kept in office. It was a real evil. As a matter of fact, some of the majority said, we agree with elections, but the courts just aren't up to standard. What are you going to do about it? Well, we thought about a lot of methods. Finally, we came down to this. It's covered in a little different language, but what we've done is said, fine. If there's a vacant seat, the governor can fill it, but he can't fill it permanently. Any man who takes the job can't be a candidate to succeed himself. Now, we had some protest about that. They said, where will you ever get anyone? Well, I know of two circumstances where that happened and they didn't have any trouble getting anyone at all. If they have a vacant seat in the supreme court, I'll guarantee to have eight or ten lawyers from Butte over here any time, even if it's only for a few months, for the honor of filling a position on the supreme court. The same thing on the district

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court level. They're going to say it's a big hurdle, and I'll guarantee you, it's not. And, yes, they will have a weak man, somebody that goes in there just to fill out the term, but they won't have an appointive court system, and this is what we were worried about. The election of judges -- generally, you'll get somebody who is a politician. This is a big kick with a lot of people. But, the basic attributes of a politician are pretty good for a judge. Generally, they have to like people, and I like judges that like people. Generally, they have to be courteous and I like judges that are courteous. Generally, what trial lawyers do, they go into those lawyers, and they have an important case -- or they have a case, all cases are important, of course. They're going to look up the law. They're going to see that that law is delivered by a method, by what we call the trial brief, to the judge. When we go to the supreme court -- I mean, we do -- We write briefs up, we argue the case. Basically, what you want is a fair man who can comprehend what the law is and hope he has enough human understanding to get by. They talk about this federal court system, but when you see some of the tyrants that get on the bench under that system -- fortunately, under our system in Montana, we don't have them now -- but, we did have them. We had them that levied the thousand dollar fine. We had one one time, who appointed a lawyer to serve without fee to represent a defendant in a criminal case. The case was to start

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Monday. The lawyer came down with an acute attack of appendicitis and was operated on Saturday. He was in the hospital, and he didn't show up for trial. That Monday morning, he got fined for contempt of court. I'll tell you, if that judge had ever come up for a vote, he wouldn't have been there very long. But, he was under the federal system and was appointed. We submit to you, that we have made important changes in the judicial article in the majority report. But, we've made them with the spirit -- these people have come to us and said, this is wrong, and then we have gone after the specific cause that they're wrong. We think this is the way the constitution should be handled. The minority report -- and these people are all good, sincere, hard working people. They honestly feel and believe in their position. They take a different path. They rewrite the judicial article, we feel, eliminating many important safeguards. Please don't turn down the majority report because it has more sections than the other. Read it, examine it, and determine between these two plans, upon the merits. Thank you very much.

CHAIRMAN BROWN: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Brown. I move we recess until 1:15 o'clock P.M.

CHAIRMAN BROWN: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN BROWN: Opposed, No.

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(No response)

CHAIRMAN BROWN: Motion carried.

Mr. Rygg

DELEGATE RYGG: I'd like to call a meeting of the Revenue and Finance Committee immediately on recess, in the Rules Committee room.

CHAIRMAN BROWN: Any other announcements?

(No response)

(Recess 11:55 o'clock A.M.)

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MONTANA CONSTITUTIONAL CONVENTION

THIRTY-THIRD DAY

February 26, 1972 Convention Hall

1:25 o'clock, P.M. Helena, Montana

CHAIRMAN GRAYBILL: The Committee will be in session. The Committee will be in session. The Committee will be in session. Before recess, we were discussing the two judiciary proposals with the idea that we would take a tentative vote after the discussion. I believe that Mr. Holland had finished and Mr. Berg -- Mr. Holland, are you finished?

DELEGATE HOLLAND: I am, Mr. President, except for one thing. Both the majority and the minority are quite willing to answer questions about their plan. We think it would be better if, in orderly presentation, if the minority proposal is fully presented and then invite what questions the Delegates may have.

CHAIRMAN GRAYBILL: Right. Ladies and gentlemen, after Mr. Berg finishes his presentation, we'll have questions and discussion and debate if necessary before this motion. Very well.

Mr. Berg.

DELEGATE BERG: Mr. Speaker, Mr. President, I have asked Mrs. Pemberton to give us a just short statement and I would yield for that purpose.

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CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President. Thank you, Mr. Berg. This is a day that I've looked forward to for quite a long time. Is this coming through O.K. up there? Good. I don't want you to miss a word.

(Laughter)

DELEGATE PEMBERTON: In the first place, it's a very great pleasure to share Mr. Holland with you.

(Laughter)

DELEGATE PEMBERTON: He actually hasn't been under cover since January the sixteenth. I started to take notes this morning and then I realized that there was nothing new that we hadn't heard for the past few weeks. So, evidently, however, my friend over here hasn't had time to read the papers and on the morning of February twenty-fourth, last Thursday, in the headlines of the Great Falls Tribune, in a several column, well written news story, was this story which was: Court improvement possible besides death of the Montana Plan. He referred to it for quite some time this morning and I presume he had not had time to see this. In a few minutes, I'll have it put on his desk with my compliments. The way that this came about, I think that the delegation deserves a little explanation and I will be happy to give it. The Montana Citizens for Court Improvement, with the Third Citizens' Conference that was held in Missoula in October, as an informational seminar

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because of the Constitutional Convention, was sponsored by Montana Citizens for Court Improvement. It was not looking toward anything at that time except the Montana Constitutional Convention, and people were invited to do this at that time. There were rather baseless remarks and out of order, I felt, this morning in referring to this group of dedicated people looking forward to court improvement in Montana as, in their plans, when they were referred to as the Sullivan Plan. I thought it was a vindictive attack on a fine gentleman. I have not had the pleasure of meeting this man until last March at the National Conference of the Judiciary in Williamsburg, Virginia, and this -- at that time this convention was planned and everyone was making plans toward presenting different things for the information of the Delegates. And this plan -- this conference was planned at that time and the people who planned it had been working toward court improvement since 1966 at the invitation of the American Bar Association, the Montana Judges Association, the Montana Bar Association, the school of law at the University of Montana, and the American Judicature Society. We had picked this up at their invitation, one hundred citizens such as these laymen, across the state of Montana, and looked toward court improvement from that time on. When we picked up a challenge that the profession felt that they could not do from within. This was presented to us in a three day conference at the expense of the Delegates, who were invited to be

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there. It was a courteous thing to do. We looked at it, and after looking at it for five years, studying it, and going from -- into different states, comparing it with different plans, such as you have had the opportunity to do here, we came up with a comprehensive plan which we felt looked toward court improvement. If this did not please this delegation, that is up to you. I personally am committed, not toward anything specific except court improvement. With that, as I looked and sat on the ringside seat of a judicial committee within this Convention and could look toward two groups planning the judiciary article of this Constitution, I found which way I could go, which way would point toward court improvement. I do not have to get permission from anyone; however, I have consulted many, many authorities. I felt they were very authoritative in their field, with great background. I came out of this, not as an attorney, and I never will be. I am a layman but I am very pleased to have worked for court improvement and I still feel I am when I looked at the plan of the minority group and the report that they are going to give to this Convention in a few minutes. It has a number of things that you must give very serious attention to. I do not feel that the majority has gone forward or has court improvement within its article. One of the members at one time said, we will write an article for Montana. We will not take it from other states; we will not do this and we will not do that with it. I feel that the

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minority group has written a very good article and it is written for Montana. There are things in it that are not written for any other state. It is written for Montana and you will not find them -- some of them -- to make a comparison, and they are good and they will last, and they look forward; they do not look backwards, and I would recommend them. I would like to describe the American Judicature Society as long as it was referred to this morning. This is a group of a number of lawyers and judges and laymen in fifty states, in Canada and forty-three other countries of the world. It was founded in 1913 to promote the efficient administration of justice. There are thousands of members who belong to this. I am not a member, but they have given us great help and great assistance in looking toward court improvement and the mechanics of putting on these different conferences which have always been open to the press and supported by many people across the state of Montana. We have been directed by a gentleman who lives in a twenty-six mile area of Montana and keeps telling me that this is different from any other place in Montana. I would like to believe that. I know some very fine people who live there, also. I live on a ten thousand -- I represent a ten thousand square mile area of Montana. As compared with some of the other areas of fifty-seven thousand voters, we probably represent around six thousand. I believe my other Delegate from District One would say that's about right. This is not necessarily a ques-

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tion of land versus people, of cities versus ranches. I think it's a question of all Montana, civic leaders representing the state as a whole, and I would like to also think that this is opportunity time for Montana, which I have stated it before, and that you look forward to court improvement with me. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. President, members of the delegation, Mr. Holland. You know when you start the trial of a law suit and you're arguing to the jury, you always start it out by saying, may it please the court, counsel for the plaintiff, counsel for the defendant, and then ladies and gentlemen. The way that we are presenting this judicial article today is something in the measure of a final argument as it would be conducted in court, and that is altogether appropriate when you are discussing the judiciary and the judicial article in Montana. But I am reminded now, in the beginning, of an admonition my mother gave me years ago. She used to say, I wonder if that boy will ever learn to talk? And then later, and forever, she said, will he ever learn to say anything? Now, as I listened to Mr. Holland this morning, I was reminded of my mother's admonition, much as he thinks of his father or grandfather. And I was impressed with this thought, that he spent so much time on the minority viewpoint of the judicial article that it must for that simple reason have some merit. And it's

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that merit I want to discuss with you as briefly and as concisely as I can. But I also want to make this observation. There was considerable criticism this morning of the brevity and perhaps the so-called novelty of the minority plan. I take credit, if credit is due, for the brevity and I would remind you that I was astonished this morning to hear the United States Constitution, and particularly the judicial portion, the judicial article of that Constitution, also accused of brevity, which I have always thought was the mark of fundamental, good constitutional writing. And if the minority article suffers from brevity, so be it. I'm proud of it. Let's start now with section one, and I'm going to be looking at page forty-six of the minority report. It begins with the judicial power. It vests the judicial power in the supreme court and in the district court and then, just like the United States Constitution, and such other courts as may be provided by law. It differs from the majority report in this significant manner. It does not mention justices of the peace. Why? Before our committee, Mr. Gardner Brownlee, Judge Gardner Brownlee of Missoula, spoke as the spokesman for all justices of the peace and in the course of his comments, he said that insofar as the justices of the peace of the state of Montana are concerned, they do not care whether they are or are not mentioned in the Constitution and, in particular, in article one. Let me say this to you, that I have examined, as apparently Mr. Holland has not, this volume,

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volume fourteen, on the judiciary. And I'll call your attention to pages seventy to seventy-five which deals and sets forth all of the states of the United States which, within the last five years, like us, are considering the elimination of the justice of the peace as a constitutional court. If you will examine that, there are approximately thirty states listed and I count twenty-five of them who, within the last five to ten years, have done one of two things. They have either specifically abolished justice courts, or they have eliminated them from the constitution. Now, I think that's pretty reasonable authority to look to in the drafting of our Constitution. But we are not alone in looking to other states for precedent in this regard. Every poll taken that I know of overwhelmingly suggest that we eliminate justices of the peace from the Constitution. For example, the same poll that Mr. Holland referred to this morning with regard to the justices of the peace, which he overlooked in his argument -- the same poll conducted of all lawyers by the Judicial Committee of this Convention -- the report came back, sixty-six lawyers in favor of retaining justice courts as constitutional courts, four hundred and fifteen opposed. Mr. Holland takes great pride in his membership in the Trial Lawyers Association and the poll which they took posed the question just a little more differently. Instead of asking whether they should be simply continued as a constitutional court, the poll said, should justices of the court be

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abolished. Now, these are the so-called lawyers in the pit, of which I take pride in being one, and they say, seventy-three should abolish; thirty-eight continue. Now, if you are on the Judiciary Committee in this Convention and you're confronted with that sort of poll, taken by lawyers, people who work in these courts all of the time, what would your conclusion be as to whether they should be or should not be listed as a constitutional court? I take it that you would agree with the minority and that you would not include them as a constitutional court in section one of your Constitution. The minority has not done so; the majority has in spite of all of this disapproval that was before the committee. All right, let's go on then. Well, let's not go on to section two. Let's talk also about the treatment given to the justice courts by other provisions in this minority and compare with the majority. Take a look, if you please, at section four. It's on page fifty-six. This has reference with regard to the jurisdiction and the powers of district courts. Let me read it to you. I'm sorry, mine's fifty-eight -- I have a little obliteration on it -- it's page fifty. Fifty -- section four. With regard to the power of district courts, it says: Original jurisdiction of all matters and causes, both civil and criminal, including the power to issue, hear and determine original and remedial writs is vested in the district courts. Now, take note of the next clause -- but distribution of concurrent

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jurisdiction with other courts may be provided by law. Now, throughout the rest of the minority we have referred to the methods of qualifications, the terms of judges, the pay of judges in the lower court system. In every instance, it has been left to the legislature. But, now, let's go back and take a look at how the majority so magnificently treats justices of the peace. You will recall that in article one they have mentioned them as a constitutional court. Let's take a look, however, at section nine on page twenty, which has reference to the majority report. Let's take a look at the first sentence in regard to the jurisdiction of the district courts. What does it say? The district court shall have original jurisdiction in all cases -- I emphasize the word, all -- at law and in equity. And then it goes down and it includes all of these various types of actions that are classified as being within that all-inclusive jurisdiction of the district courts. All right, let's go on back here and take a look at what they did to the justice of the peace court, and that's at section sixteen at page twenty-six. What did they do? Go down to line twenty-one. It says, justice courts shall have such original jurisdiction within their respective counties as may be prescribed by law. Think about that for a minute. In the majority report, all jurisdiction for all cases in law or in equity is exclusively, practically exclusively, vested in the district court. What's the legislature got left to give to

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the justice court under that kind of a constitutional provision? Nothing. Very little or nothing. It is a collosal mistake in the writing of a judicial article. Now, I'll say this. I've been a little harsh on the majority. They have -- they have given to the justice court, apparently inferentially only, jurisdiction up to three hundred dollars in civil cases. They have done it in a negative way. They have said in their judicial article that the district court has jurisdiction in such actions in controversies which exceed three hundred dollars. So, presumably, there is room left -- and only this much room left -- for the justice court. Now, we are not talking about the situation as it is today. We're talking about tomorrow and I suggest to you that you can't find in the majority report, so far as the lower court system is concerned, any room for tomorrow. There's no place left for a small claims court, as I'm sure we would some day like to see in some parts, perhaps all parts of Montana. No room left for that today in the majority report. But look at the minority report. There is more room there than you can ever imagine in this term that the legislature may provide concurrent jurisdiction with the district court in any lower inferior court, and so the legislature may at any time give to small courts, lower courts, unlimited jurisdiction within, but there is this safeguard at all times and that is, that jurisdiction is concurrent. In this, that there is a constitutional court established, a district court,

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in which all jurisdiction is vested and the legislature may give concurrent jurisdiction to a lower court but not necessarily take it away from the district court. A more elastic, flexible system cannot be designed. Under that system, in the minority, so far as jurisdiction is concerned, you may improve and create -- you may not only improve the justices of the peace, you may create other courts if you want to, you may have a small claims court, you may have a municipal court, you may have a police court, you may have any kind of a court the legislature finds necessary in the future. Furthermore, because the justices of the peace are not specifically named in section one of the minority report, that does not mean at all that they have been abolished. To the contrary. Their jurisdiction stays as it is today but the legislature may in the future, under our article, do with those courts as time and events require. In my own mind, I think there is great room for improvement in the justice of the peace court. I want to see those courts elevated. I'd like to see them given dignity. I would like to see them trained. Indeed, if I were in the legislature, operating under such broad powers as we give them in the minority, I would suggest that an academy be established at one of the universities, much similar to what we now do in the case of law enforcement officers, and I would arrange for those justices of the peace to go to that academy annually and be trained and educated in the matters that they deal with, so

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that when people come before those courts, the law is being interpreted and meted out as it is intended to be by the legislature. This is improvement. This is the sort of thing that should be done in Montana and it should not be hamstrung. Dollar limits should not be placed upon it because the time may come when in Billings or in Great Falls, indeed, even in my home town of Bozeman, for a municipal court of much broader jurisdiction may very well be required. It may very well enhance the development of justice and we ought to allow for it here in this Constitution. If you accept the minority report as I have explained to you from a jurisdictional viewpoint, the power is there. It's in the legislature; it can be accommodated. Now, one other feature of the minority plan which Mr. Holland overlooked and which I think is of considerable value to the administration of justice in the years to come, and that is the administration of courts. Today, in Montana, we have no system whatever for any kind of administration within the judicial system, and do you know, we're one of thirteen states -- only thirteen states left are in such a deplorable condition from an administrative viewpoint of judicial affairs. In the majority report there is no mention, none whatever, of administration of the judicial system. But the minority report does accord it, and here again, let me refer to the minority report. I have a little trouble picking my time out. With reference to section two -- now, I'm looking at page forty. I

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1 guess you could look at page fifty-two, or something like that,
2 and find the same thing. Maybe I'd better stick with the com-
3 ment on section two of the supreme court. It's on page forty-
4 seven -- yes, section two. Note this -- the second sentence --
5 the supreme court may make rules for the practice of law and
6 judicial administration in all courts. Judicial administration
7 in all courts, as I say, has been accommodated in all states
8 but thirteen and Montana is one of the thirteen. And of those
9 thirteen, two -- I think it's Indiana and -- I can't offhand --
10 Indiana and Maryland are also considering in constitutional re-
11 vision to include judicial administration and the centralization
12 of it in the highest court. If they adopt it and we don't,
13 we'll be one of eleven left. If we do adopt it, there will only
14 be ten states left yet not to adopt it. It is an advantage
15 that every state has recognized apparently from the beginning.
16 It is not even considered in the majority report. I don't ex-
17 pect this judicial administration of the judicial system,
18 centered, as I say, in the supreme court, to become a vast,
19 bogus of power. I don't anticipate that there is going to sud-
20 denly be employed by the court a court administrator with an
21 elaborate staff. Not at all. I anticipate that this will
22 grow and grow gradually and I think that the clerk of the
23 supreme court is an adequate arm of the supreme court to ac-
24 commodate this function. You know, when we looked down and
25 started to find out how many justices of the peace there are,

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how many kinds of cases they handle, whether they're civil, whether they're criminal, what results have been obtained in these various courts, we had no place to go except, if you please, to the highway patrol office. And, of course, they could only tell us about highway patrol cases. Now, that's a deplorable situation in the administration of justice in this state. This is the kind of a problem that needs attention. The minority report accommodates that. It is not going to set up an elaborate court administrator but it will, through the clerk of the court, if his duties can be prescribed by the clerk of the court, be facilitated and that's all a constitution should do. We shouldn't spell it out to them and we haven't. We have enabled it. Now, this is one good reason why we did not elect the clerk of the supreme court of the state of Montana; rather, we provide for his appointment. But we also, if you'll note, permit the court to fix his duties and we have in mind there that among those duties may be administrative centralization of the administration of the court system. And if you are going to have the court system administered by a clerk, it seems to me that clerk should be the court's clerk. Therefore, we provide for his appointment. Moreover, we did not feel that the clerk of the supreme court was such a vital office in, particularly -- certainly not -- excuse me -- a policy making office but, rather, such a vital policy-making office in this state that it required the elec-

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1 torate to designate him. Let me point this out to you. So
2 far, in this Convention, I have yet to -- I have not failed to
3 vote for the election of every state official. I personally
4 believe in the sovereignty of the people. I believe in extend-
5 ing the franchise, but when I get down to the court system and
6 I come to the clerk of the court, I say, why? Who knows any-
7 thing about the qualifications, much less the duties of the
8 clerk of the court in the electorate out over the state? I do
9 not think that office is essential in the elective system. For
10 that reason, I have gone along with his appointment by the
11 court because I believe it will achieve a better administrative
12 system within the court system. That's why we differ from the
13 majority on the method of selection of the clerk of the court.
14 Now, we come to the rule making power. Much discussion went
15 on in the committee, much testimony came to us from lawyers
16 regarding this rule making power in the supreme court. It was
17 significant to us, I'm sure to both majority and minority, that
18 when this poll came back regarding rule making power, that many
19 lawyers who thought there should be rule making power scratched
20 out rule making power insofar as the rules of evidence were
21 concerned. Both the majority and the minority agreed that rule
22 making power in the field of evidence ought to remain in the
23 legislature. We felt that there is such a gray line of dis-
24 tinction between substantive and procedural -- or perhaps a
25 better word is adjective law -- that if that rule -- that field

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of law is to be changed, it ought to be done by the law making body, the legislature. So, the minority report does not include the power in the court to make rules of evidence. But, the minority report does permit the supreme court to make rules of procedure. Here, too, however, we've guarded that power and said, as provided by law. Now, this morning, Mr. Holland was inquisitive about that. I don't really mean inquisitive -- critical. He doesn't know what the term, as provided by law, means. I do. I know -- I know and you know and everyone knows that that means as provided by the legislature. We have that provision in this Constitution in practically every article that's been written and we all understand that that means, as provided by law, means as made by the legislature. And so it is intended by the minority in the rule making power. In other words, the rule making power, as it is set forth in the minority, is circumscribed by legislative control. The supreme court, even in rules of procedure, has no power except as is given to them by law -- by the legislature -- and there's nothing new about that. Today, all our rules of civil procedure that we operate under, have been promulgated by the supreme court under legislation given to it where it was empowered by the legislature. We change nothing. We leave it as is, except we recognize that the court may do it if -- and only if -- the legislature so provides. We come now to another issue. I want to get to the election of judges and the manner of selec-

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tion of judges, but I'd rather take that up at the end. We come to another issue which Mr. Holland also discussed and, by the way, when I refer to Mr. Holland's discussion, bear this in mind. Before we argued on this floor, we mutually agreed on what we thought were the major issues in the judicial article so the fact that he discusses it and I discuss it is because we understand eachother. We understand these to be the major issues and we want you to understand them that way, and one of them is the disqualification of judges. Now, it is inherent in the judicial system of the right of disqualification at all levels. No cases tried before a jury without the right of each side to disqualify jurors, with or without cause -- you're entitled in a civil case, each side, to four disqualifications of the lay people who sit on juries. This is as old as the judicial system in this country and older, too, because it comes from England. It's with us today. Lord help us if it's not with us tomorrow. Likewise, in the history of the state of Montana, we have always been able to disqualify a justice of the peace in the lower court. We exercise that right insofar as the district judge is concerned -- always have -- and, I predict, always will. The only innovation suggested in the minority report in that regard is that that same right be carried upstairs to the supreme court. Why have this right of disqualification? Why do we use that in the judicial system? Why should it be there in any reform or improvement in our

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court system? Why? I'll tell you why. You, or anyone else, as a litigant are entitled -- absolutely entitled to be assured that you've got an impartial judge sitting up there in judgment of your rights. And if -- if you have doubt, or you have belief that there is partisanship in the mind of that judicial officer sitting in judgment of your rights, are you -- could you ever be satisfied, especially if you lose, that you had the impartial trial the law guarantees? This is the essential reason for the right of disqualification. And I suggest to you-- let me put it this way -- I have been practicing law, that is, I have been admitted to practice for thirty years. I have been actually practicing something like twenty-five because of World War II. Now, in all the course of my history, and I think I try as many law suits in my area as any lawyer there; I believe I have as much experience in the supreme court as any lawyer in this room; and yet in all that time, I have never, ever, filed an affidavit of disqualification on any judge. I hope the day never comes when I feel I will have to. But, if I do, I want the right. I want it not for myself but for my client who I represent and for his cause, and most of all, for the cause of justice. Now, these are the reasons why that section is included in the minority report. I have a suggestion about it. If you'll look at it -- I can't remember, I think it's section nine or ten, relating to the disqualification of judges, and it says the legislature shall -- I'm inclined to

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1 think that that should be changed to the word, may, but no fur-
2 ther, because if this principle of justice that I have just
3 mentioned to you is to be carried out to its logic, then it
4 ought to be included in all courts at all levels. Then, inci-
5 dentally, this particular section was not of the making of the
6 minority. Indeed, it was suggested to us and brought to us by
7 a lawyer as a proposal and we in the minority accepted it. I
8 don't know why under the sun the majority didn't do it. Now,
9 let's talk about the real tough, vital issue in the judiciary,
10 and that's the selection of judges. Today, as you all know,
11 we elect our judges on a non-partisan ballot. Now, I think I
12 can talk about this issue with some authority because my father
13 was a district judge for twenty-eight years. He was on the
14 partisan and the non-partisan ballot and he stood competitive
15 elections on a number of different occasions. I'm proud, as
16 I'm sure he was, that he survived. But, let me tell you, from
17 a judge's viewpoint, that is not an easy ordeal. But we are
18 not really concerned especially about what the judges' view-
19 point necessarily is on this. What we're really concerned
20 about is, what are the people's concern in this method of sel-
21 ection of judiciary. Now, there are about five systems recog-
22 nized in the United States. There is the pure appointive sys-
23 tem whereby the President or the governor appoints with the ad-
24 vice and consent of his senate or his legislature. That's em-
25 ployed in, I think, about nine states. There is the election

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of judges on a partisan ballot, and I can't recall the number of states, but it's approximately twelve. There is the election of judges as we do it in Montana on a non-partisan ballot; that's about seventeen. There is another appointive system used and that is used, I think, in five states, and those five, the judges are appointed not by the governor but by the legislature. And the final one is the so-called merit system and that's employed in about nine states. It is the most recent development in judicial history and it has had, perhaps of all renovations and changes made, it has been to that system that states have most recently turned. The minority -- let me say this -- I'm sure that in the mind of every majority member, no other consideration other than the election of judges, was even thought of. The minority did. And we had before us what is called -- it's dead now -- the Montana Plan. And under the Montana Plan it provided for this: it provided that there would be a committee or a commission, if you please, created in the Montana Plan by the Constitution, its composition to be determined by the legislature, and this committee would select nominees from which the governor must make an appointment and the appointee would then become judge, subject only to acceptance or rejection at every general election at the end -- at the termination of each term of office. This was the Montana Plan. It is taken, basically, from what is known as the Missouri Plan of selection. It is used in other states, but in

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Montana we, at least in the minority, did not feel that we should ever divorce the judiciary from the electorate. We feel some kind of elective process is essential in the selection of the judiciary, as well as the selection of other officers. And the majority said to us, well, if you can draw a blue ribbon committee, a perfect committee, that will assure to us purity in the nomination of these judges, we'd even go along, I think, with the Montana Plan. We tried. We agree with the majority that we, as a Constitutional Convention, or at least as a judiciary committee, can't draw that blue ribbon, perfect, pure committee. We weren't struck with that divine providence that it takes to make humans perfect, and so we said to ourselves, we don't dare lock into this Constitution the exact composition, method of operation, of this so-called nominating commission. Under these circumstances, we said, the better course of wisdom is to let it go to the legislature. Now, we're not really passing the buck, and I'll tell you why. Because, if errors are made and it develops in the operation of this nominating commission that mistakes have been made and imperfections are developing, it can be corrected without destroying the entire system. And so we left it to the legislature and in our comments -- I think it's section seven -- we gave some observations to the legislature as to how we thought it might conceivably be done. Number one, we said, it should be a widely geographically distributed committee. It must be

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non-partisan in character. No member may hold public office, either public office under the government or a political office in a political party. The object here was to insure as nearly as possible that this committee will not be dominated by one party or the other. Likewise, we were concerned about this committee being dominated by some vested interest, so we enlarged it. Now, these are suggestions and you'll find them in the comments, and we thought the best possible arrangement would be that they be geographically distributed in the eighteen judicial districts of the state, not only for the purpose of getting -- by dispersement we lose concentration, but also we felt there should be some member from each judicial district in the event of vacancy in the office of a judge in that district, somebody who knows the local situation personally. That's why we made that suggestion. Now, this isn't to be written into the Constitution, as I say, but they are guidelines given to the legislature should you adopt the minority plan. But we weren't satisfied, the minority wasn't, with just a nominating commission. We weren't satisfied that thereby we erased all politics or we erased all vested interests in the selection of judges, so we took it one step further. We seized and accepted the idea of the federal government that appointments of judges will be confirmed by the senate. So, we made one more hurdle, one more step in the gamut for this appointee to go through. Now he is -- he has been appointed by the --

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selected by a nominating committee, the governor has taken one of at least two or three names and he has nominated that man. He's come before the senate and he's been confirmed, but he's not yet an elected judge. He's only an appointed judge. And, so, in the minority report we take it one more step and we say, at the first primary election following your appointment, your name will go on the ballot and any lawyer, in the case of a district judge, residing in that district can run against that appointee. And in the case of the supreme court at that first primary election, any lawyer living in the state can run against that appointee. And the one who gets the highest vote in the general election -- now maybe the appointee loses out. If there were three or four in the primary, the appointee is out. The ones -- the two having the highest vote in the primary go into the general election and there we get an elected judge. Now, at that point, the competitive, elective system in the minority plan stops. From that time forward, this elected judge goes onto the ballot for acceptance or rejection by the electorate at every -- at every election -- at the end of every term of office when there is an election. And if he is rejected, this process of nomination, confirmation, appointment, and election is repeated. Now, we took a look at some statistics in Montana and we find that since 1952 there have been sixty-six elections of district judges of which -- no, of eighty-four, excuse me, eighty-four elections of which, I think it is,

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1 sixteen or eighteen that have been contested. It leaves sixty-
2 six elections of district judges since 1952 for which there has
3 been no choice in the electorate whatsoever. It means this,
4 that in sixty-six elections the incumbent judge went onto that
5 ballot's name with just a place for an X, a place for a com-
6 plimentary vote. It means this, that if that judge got one
7 vote and there was no other write-in, one vote elected him.
8 Compare that, if you please, with the minority plan on approval
9 or rejection at a general election. Here the judge -- the
10 voter goes in and he says, I either approve or I disapprove,
11 I want him rejected. If more than fifty percent of the votes
12 cast for the judgeship are rejection, that judge is through.
13 But, more than that, if a large percentage or an ever increas-
14 ing percentage of rejection votes come along, how does that
15 impress the attitude of this judge? Will it make him, as Mr.
16 Holland suggests under the federal system, a tyrant? Or will
17 it give him recognition that there is a very powerful elector-
18 ate outside his door every four years. Now, what about this
19 system? What happens when the elector goes in behind those
20 black curtains and makes up his mind about the activities of
21 that judge during the last four or six years? How does he
22 really react? I ask you that. This is the kind of a choice
23 that the minority plan gives you. Now, let's talk about the
24 selection of judges and what we are really trying to achieve
25 here. It's like Dave Holland says, we want good judges. We

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want, I say, the best judges. Let me ask you this. If you are sued or you sue, where to you go for counsel? Don't you go to the best lawyer you know of that you can find to represent you? And don't you anticipate that your opponent will do likewise? All right. If you have a choice of the best lawyer, as does your opponent, how do you get that choice? You know it is either because of a personal acquaintance with that lawyer or you knew it by reputation or you knew it by inquiry. So does your opponent and so you come into the court room and there you are, down in the pit, and up there on the bench is sitting this man in a black robe. Now, this man in that black robe is going to judge the work of your lawyer and your opponent's lawyer and I would think you would want to have a judge capable of understanding and judging their work. He should be at least as learned in the law and as experienced as these two good lawyers down there in that pit. Otherwise, you are not going to get the kind of justice you expect when you get into that court room. In other words, you've got to select a judge who is, number one, an impartial judge. You've got to select a judge who is learned, who is skilled, who knows his business. He doesn't have to be -- and I don't think he really should be -- the most popular lawyer in the community, but he's got to be a man who has the courage of his convictions. He's got to be a man who is free from the onslaught of prejudice. This is the kind of a judge that will insure the administration of jus-

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tice. Now, let me ask you this. If you're talking about the supreme court, how much of the electorate, how many of the electorate of the average voter even knows who is on that supreme court -- the court of last resort; as we say in the minority report, the court of final appellate jurisdiction. Who knows these men? And if they can name them, if they are that much advised about the legal system, who also knows their background, their experience? How can the average voter be informed on the selection especially of supreme court justices? Not under the present system. How would they campaign today? They go along, they go out into the state, they meet a few people. Sometimes they trail along with either the Democratic or the Republican caravan and they have nothing they can or will say, so the public is utterly uninformed about them in any way. How can you compare that elective system under those circumstances, if you agree with me, with the minority approach? At least this you know--insofar as the supreme court justices are concerned, that one of the candidates for that position has been through a screening, a good, thorough screening, a screening perhaps by eighteen men. He has had to be confirmed by the senate of this body and then he comes to an election. He is at least endorsed to that extent and to that extent his qualifications for that job are recognized and the voters do have an opportunity to make an informed selection of judges. Now, this is the criterion of the minority report. I should like to go

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back now and take up one other detail and that is in regard again to the rules of court. Mr. Holland indicated that the supreme court would have the power to make rules of practice, whatever that may mean, he says. Well, for his information, and I think every lawyer in this room agrees with me, the supreme court has been exercising the power to control the practice of law for, lo, these many years. No one becomes a lawyer in this state except they are admitted to practice by the supreme court. Moreover, as we all know -- that is, of the lawyers know -- that the supreme court has created what is known as the commission on practice and that commission on practice, its duty is to look into the censure, to the discipline of lawyers. This relates to the practice of law. It is the application of rules in that regard that we have in mind and that all lawyers clearly understand when we talk about rules controlling the practice of law. It's that simple. It's been used, it's inherent, it's been with us for, lo, these many, many years. Now, I have not talked about the judicial commission or the judicial standards commission. Neither did Mr. Holland. Mr. Holland's -- both of us agree that there should be a judicial standard commission. All of the judges that appeared before us recommend it and there is serious reason why we should have it, and that is, if you have a judge who is disqualified by reason of senility, maybe alcoholism, maybe repeated failure to perform his duties, today there is no method by which that judge

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can either be censured or removed or retired, short of impeachment. And I believe impeachment proceedings have only been used on two occasions in the history of the Constitution. It is really not a procedure that should be used so far as judiciary is concerned except in cases where it really is applicable and, as I say, it has been used twice and perhaps not really applicable then. But, the real hard core problem and the real place for improvement in court -- in justice and court reform -- comes through the creation of a judicial standards commission. I want to thank the Convention for permitting the judiciary to more or less avoid the rules of presenting this in any other manner. I hope sincerely that what we have said clarifies the issues, clarifies the difference between the minority and the majority report and that you are therefore better able to have an informed decision on it. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee, I feel, before I begin, that I should tell you something about what kind of practice I have so you'll have some way of knowing whether or not I have an ax to grind. I belong to a law firm of three partners. We have a retainer from the Security Trust and Savings Bank, Security Savings and Loan, and the Great Western Sugar Company. Otherwise, we have the same kind of practice that almost all of the smaller lawyers, at least, in Montana have. We do a small amount of defense work

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in insurance cases but for the most part we do plaintiffs' work. I've spent the better part of ten or fifteen years working on Indian claims cases and I have been fortunate in winning for four or five Indian tribes some thirty million dollars. That is my background of my practice. I'm a little torn at this moment as to whether or not to give the speech I gave at the cocktail party last night or the one I've been scratching down here today and I think wisdom dictates I give the one I gave today -- no, that I scratched down today. I have no present ideas of running for any judicial office, although I have in the past and if John Harrison is in the gallery somewhere -- I can't see him for all those lights -- I want to assure him that at this moment I don't have any ideas about running for the court. However, this morning I got a communique from one of the places in this house, saying that there are three or four people who were interested in my running for the court and that's three or four more than were interested when I ran for it the last time --

(Laughter)

DELEGATE SCHILTZ: -- so, if somebody can scare up one or two more, I'll consider it a groundswell. In the absence of John Harrison from the galleries, I don't think there is anyone in this hall who knows nearly so much as I do about running for a judicial office. And, so far as I'm concerned, the question here between these two, the minority and the major-

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ity reports, is whether we elect judges or whether we select them on some other basis and the minority calls its basis the merit plan. Now, let me be the first to say, from first hand experience, that the system we are operating under now is a rather terrible and terrifying system. Let me give you an idea of what it's like. If you do as I did and you run for the supreme court with the announced intention of not accepting any money from lawyers, you're in serious trouble right from the beginning. Now, I did make that announcement and I did hold to it, although I'll admit that one place and another I found in the neighborhood of eleven hundred dollars that was given to me anonymously. I can tell you honestly that I don't know where it came from but I suspect very strongly that it came from interested lawyers who respected my request that I not get money from lawyers. But this is your sole source of campaign funds when you're running for the supreme court. You either have lawyers who give it to you in case you win or you have lawyers who are afraid not to give it to you, or you get it from lawyers who are genuinely interested in your philosophy of what a court ought to be. But, as I envision this terrifying prospect, if I were to be sitting on the court, I didn't trust myself not to give a little edge to a fellow who had given me five hundred dollars over the fellow who hadn't given me five hundred dollars. Or, I didn't trust myself to say, that guy who gave me that five hundred dollars isn't going to

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get away with it; I will now hold for the other fellow. The thinking is this -- it's basically bad -- the American Bar Association recognizes it's bad, and the Canons of Judicial Ethics of the American Bar Association says something to the effect that we recognize that this is a bad system but, nevertheless, it is the only source of money for the judges. However, they do frown on it. They are now working on a system for elected judges to be able to get money anonymously so they don't know where it comes from. But, on top of that, if you are running with -- on short rations -- you then must decide just how you're going to go about running for this job. Now, I don't know where Mr. Berg was or Mr. Kelleher was, who voices the same sentiment, when I was running for the court. I suspect that Mr. Kelleher was somewhere reading about the Baron DeMontesque, and Mr. Berg, I don't know where he was --

(Laughter)

DELEGATE SCHILTZ: But, in any case -- in any case, when I ran for the court, I did not have billboard number one, and that wasn't entirely because I couldn't afford it. I did not have one inch of space on the television nor on the radio. I set out to say what I thought was wrong with the court, and I started out before I did that, I filed in the primary and I got twenty-five thousand votes. Those were either automatic votes, or they're accidental votes, or they're votes against the other fellow -- I don't know where they came from. And

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that wasn't many. So, I set out to say what I thought was wrong with that court, what was wrong with its philosophy, and I picked fifteen or sixteen significant cases, and for those of you -- probably the lawyers only -- who read those ads, they will agree with me that they did represent the philosophy of the court that we have now, as presided over by my opponent. And I went from twenty-five thousand votes to eighty thousand votes. Now, I got beat and I have no recriminations about having been defeated. I let the judges know what I thought was wrong with them and for an hour or two, I may have improved that court, from my standpoint. But, in any case, I did it and I didn't run the way Mr. Kelleher and Mr. Berg indicated that it is the only way it can be done. I ran on an issue and I didn't plaster my face all over the state of Montana, saying I am or am not better looking than the other fellow. I tried to frame issues and I ran on them and I got next to them a little bit. They got nervous. Now, on top of that, to talk about our system now, a non-political supreme court candidate is exactly like the illegitimate kid at the family picnic. The Democrats don't want them, the Republicans don't want them, he has nowhere to go. He has no base from which to operate. I went four hundred miles one night to go to Bozeman where there was a major dinner and some of you Delegates from that area may remember. Four hundred miles, and the chairman that night conveniently forgot to introduce me. This is what a supreme court

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candidate is faced with. As I say, it's not a good system as we have it, but I submit to you that in this state of Montana, where we have different problems from the problems they have in Missouri or any other state, where we have strong corporate influences, where, if I can elect a governor and through that office, nominate and appoint the district and the supreme court judges, I can run this state. I can run this state. I can own it. And Mr. Berg's system doesn't answer that problem. He's going to have an election right after you get that man in there, the next time he comes up, but after that election, and he survives that election, either he or his opponent -- and if he's not compatible with the powers-that-be in this state, his opponent is going to be -- and he is going to win that election and he's going to be locked in there for the rest of his life because, believe me, the Missouri Plan, the so-called review where a man runs against his record, -- in Missouri in some thirty years, they have yet -- well, no, they have removed one judge. The people don't know any more about it than they did until I ran and told them what it was all about. Now, that's the plain fact of the matter. Now, there's no way in this state that anybody can pick a committee, that can pick a committee who, in turn, can pick judges that are free from some kind of influence. In our committee hearings, some youth from the law school came over and said, why don't you pick them the way this Constitutional Convention Commission was picked? And,

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fortunately, I was loaded for that kid. We had -- the house picked four people, two from each party; the senate picked four people, two from each party; the governor picked four, two from each party; and the supreme court picked four, two from each party. Do you know what we wound up with? We wound up with four attorneys on that Constitutional Convention Commission who were attorneys for the Montana Power Company and one of them became chairman of the commission. Now, it is impossible in this state -- and I didn't check their other qualifications, like railroads and Anaconda Company and that sort of thing -- but you cannot, and I challenged Mr. Berg many times and I challenged the rest of the minority, you cannot pick a committee in the state of Montana that will be totally free of that kind of influence. And, I'm afraid of it and if I have to choose between one or the other, I'm going to the electorate every time because I had a chance -- I had a chance to be elected. With another few bucks, I might have made it. I'll always think so, but even if I didn't, those people in the other end of this building became aware that it's possible for somebody out here to be watching them and I think they may be better people for it. But, at least, I had a chance. Thank you.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I am rising in support of the minority report. I must confess that when I read this report last night -- the two, both the majority and minority

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reports, I felt disappointed and frustrated because I did not feel that they responded to the needs of justice in Montana and this morning I have been making -- writing speech after speech. I have torn them all up. I rise in support of the minority report as being the lesser of two evils. I may have more to say on this later. Mr. Cate may have taken me off the hook. I am very much disappointed in these two reports, after all the work that has gone into planning the judicial system for Montana, but between the two, the majority is the -- the minority is the best. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Ladies and gentlemen, the Chair intends to let you to inquire of either Mr. Holland or Mr. Berg, or to discuss it further. We do have some proposed amendments but before we move into the amendment field, I want to take the tentative vote that these people have asked for, so I don't mind discussion, but I don't want you to make your amendments until we find what we are going to amend. So, is there other discussion involving either Mr. Berg or Mr. Holland or yourselves?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, could I have an opportunity to submit the third plan and have it participate in this discussion from here on out?

CHAIRMAN GRAYBILL: Is that the article that you have proposed here?

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DELEGATE CATE: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Has this been placed around on the desks?

DELEGATE CATE: Yes, it has, Mr. Chairman.

CHAIRMAN GRAYBILL: Does anyone have any objection to Mr. Cate speaking briefly on his third plan?

(No response)

CHAIRMAN GRAYBILL: Very well, Mr. Cate, go ahead and explain your proposed judiciary article.

DELEGATE CATE: Thank you, Mr. Chairman. Mr. Chairman, fellow Delegates, I have examined the majority plan and the minority plan and I think that they are nice pieces of legislation, but that is exactly what they are. They are legislation. We were sent here to write a Constitution, not to legislate, and both of those plans are simply legislation. I blame it on two things -- first of all, the fact that the committee used the old article as the source of their beginning; and, secondly, I blame it on the Montana Plan. The Montana Plan came on the scene and everybody here thought, gee, we have to write a plan like that and put it in the Constitution. Well, that kind of a plan, and the minority and the majority plan, do not belong in the Constitution. I think that the greatest judicial system that the world has yet devised is the federal system, and I think that we ought to stop for a moment and think about what we are doing here and compare what we do

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with our federal Constitution. The article on the judiciary in the federal Constitution is one page -- one single page -- and, in fact, the important parts that actually deal with the jurisdiction, the essential parts, are one-half page -- two paragraphs for the greatest judicial system that the world has ever devised. The people's plan -- we have heard of the Montana Plan and the Moses Plan and the Holland Plan and the Berg Plan --well, you have on your desks what I'll call the People's Plan. It's three short paragraphs, taken almost word for word from the federal Constitution and that's all that we need to do here in order to perform our duties here as writers of the Constitution. This proposal would not change the present system in any way. It would, however, require the legislature to consider the matter after the adoption of this Constitution and to adopt an appropriate judicial system for the state of Montana, so the work, and the hard work that this committee has done would not be wasted. It could be utilized by the legislature, which is the place that it should be utilized. Furthermore, this plan provides all the flexibility that will ever be necessary for the future. This People's Plan, if adopted, will remain the provision in our Constitution, I would venture, until the end of time because it's all that will ever be needed. The legislature can change the judicial system in any way that they see fit to meet the changing times. Furthermore, if you adopt the People's Plan, it's not going to wreck the Constitu-

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tion. Now, one of the biggest issues that you heard Mr. Berg talking about and Mr. Holland talking about was eliminating the JP's. You'll recall we had a referendum to eliminate the JP's a few years back and it was defeated about three to one, or two to one. In any event, it was defeated. And, the point I am trying to make is that, if we legislate here, we're building up that opposition that you people have expressed such great concern about. You are going to defeat the Constitution if you legislate a judicial article. And I submit there's no need to do that. The People's Plan, of course, would deprive you of the great debates that are going to take place here in the next day or two. It would eliminate the blood bath that's about to be made here on this floor, but I would submit this, and I would ask this consideration, that we go ahead and we discuss the majority plan and the minority plan, but when the time comes, I will submit the People's Plan to you and I would like you to keep that in mind throughout all these debates and when the time comes to vote on, not just the two--the majority and the minority plan--but the People's Plan as well. I think that is all I have to say, and I would ask that this plan, which is taken directly from the federal Constitution, be considered by this Convention. Thank you.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I feel that Mr. Cate's plan probably has a great deal of merit. I wouldn't

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want to give a final opinion on it at this time, but as a practicing attorney, I'm certainly going to give it serious consideration, and it is the type of plan, or at least the goal I would try to reach. But, we are now going to discuss the minority and the majority plan, and I would like to endorse the minority plan. Mr. Schiltz talked to you about elections. I am not going to get into the merits of each plan or whether we should elect or appoint our judges at this time. But, there is a great deal of merit to the minority, outside of the elective or appointive provisions of the plan, so I would ask you, don't vote against it because you're against appointing judges. We can always adopt this plan and then amend at the proper time. So, as an attorney -- that's probably a death wish on Ben's plan -- I certainly endorse it.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I wanted to ask Mr. Berg a question.

CHAIRMAN GRAYBILL: Mr. Berg, will you yield?

DELEGATE BERG: I yield.

DELEGATE HARBAUGH: Mr. Schiltz raised a question when he spoke that concerned me as you were talking about your plan, and my question is, would judges, after the first election in which they are opposed, would it be possible under your plan for them ever again to be opposed or would they only run against their record? Would opposition be absolutely preclu-

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ded?

DELEGATE BERG: Under the plan as it is written in the minority, after the first election, opposition as a comparative race would be eliminated. The judge would run on his record for approval or rejection.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I would like to make a couple of observations so that we can reach some kind of intelligent decision as to which of these plans to start with. As I view them, there are three principle differences between the majority and the minority. The majority puts complete emphasis on election of judges at all levels and contested at all times. The minority would have an appointive judge run contested only once and thereafter would run uncontested on a Yes-No. I submit that we ought to remember that we have just finished adopting an executive article. We didn't permit our governor or any of the other executive officers to run unopposed. We adopted a legislative article. I submit that we remember that we didn't let our senators or our representatives run unopposed. Another principle difference is that the clerk of the supreme court in the majority is elective, which I strongly endorse; in the minority it is appointive. And the third, and I think the principle reason that I am speaking in behalf of the majority plan, and I share John Toole's concern about its length, and that is the justice of peace level of

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courts. I share the same concern of my good friend, Catherine Pemberton, that the basic motivation behind the Montana Plan and all the rest of the plans are to upgrade this level of justice in Montana. I think it's the sincere wish of everyone here, of everyone in the state of Montana, to upgrade the level so the question now of determining whether we want to start on the minority plan here or the majority is what would be the best approach. The minority's approach is, be silent, don't say anything about it, leave it to the legislature. To me, that would permit the legislature to retain two JP's per township, to retain the fee system, and to, in effect, leave it the way it is. The majority proposal here at least eliminated the requirement that there be two per JP, kept at least one elected JP per county, and leaves it to the legislature to set some qualifications, some standards, and a monthly salary to eliminate the monsterous sharing of the fees. As I mentioned, I share John Toole's concern about the length but I submit that we ought to make the decision as to which we are going to proceed with, on whether we want basically an elected judiciary or appointive, and the best method of upgrading our JP system. I submit that the best method for us to proceed would be to take the majority report and take a scalpel to it and cut it down to where it should be, rather than take the well-drafted and brief minority report and add a transfusion to it. And I, too, will keep under serious consideration Jerry's proposal.

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Thank you.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, in the discussion there was no mention made of section nineteen in the majority report, which is the commission for judicial standards. This is something that is new, that is much more workable than the provision in the minority report. This commission was created, basically, from the New Mexico constitution which was adopted -- or, this provision of the New Mexico constitution was adopted by the people of that state at an election in 1967. The composition of the commission was changed somewhat to meet what we thought were the needs of Montana. This commission will be composed of three judges, selected by the justices and the judges of the supreme and district court of the state of Montana, and not more than one of the commissioners of the three judicial ones should be a member of the supreme court. Therefore, the supreme court would not have an undue influence in this matter and then there are lay people, two lay people, who are citizens of the state of Montana, appointed by the governor, who are not members of any of the branches of government of the state of Montana. And these five individuals shall have the power in this commission to examine complaints against judges and in the event a judge is accused of neglect of duty or a loss of mentality because of illness, excessive drinking, drug addiction, or illness, they may recommend to that judge that he

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voluntarily retire or, upon investigation if they find the charges are true, they can call it to the attention of the supreme court who will then look into it, and if it is true, hold a hearing -- or if it looks like there is probable cause, I should say, hold a hearing on the matter publicly and have the right to remove. This is a method short of impeachment in order to take care of situations where a judge, because of age, may become not as mentally alert as he should be or because of protracted illness or injuries that may be of a permanent nature, he is incapacitated from performing his work. This is a real important provision. It is brand new in Montana. We examined in our effort not only the New Mexico constitution but we looked into the provisions in the Alaska, Puerto Rico, Hawaii, California, Colorado, Idaho, Virginia and Kansas, and the New Mexico one seemed, with the changes, to fit Montana's needs better than any of the rest of them. And I think you ought to look at this. This applies only to judges and the only way presently to remove a judge is through impeachment. If we have --we have tried to provide in the majority article for all of the things that we knew. Now, when the complaint has been made by Mr. Berg on the length of the article in relation to the jurisdiction of the district courts, we, as Mr. Holland mentioned, we looked at some short cut language. There are three pages in the Revised Codes of Montana, 1947, there's a little over three pages of headnotes of cases decided by the supreme

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court of Montana interpreting the provisions as to the jurisdiction and authority of the district courts, and we felt that those decisions should not be thrown out the window, that they are encompassed, that they do show the way, and when we adopt the same language in the present Constitution, we also adopt all of the interpretations by the court of this language. When we have new language and change it, then we don't know what we may get in the way of interpretation. There is an uncertainty in the affairs of men and women -- you are never sure. I suppose you think you may have a good lawsuit against somebody. With this new language, if the supreme court could, without ever deciding the merits of your lawsuit, could say that you brought your lawsuit in the wrong court or that the district court does not have jurisdiction to hear the case or hear the matter. Those are real important matters in my mind. Now, as to the matter that Mr. Berg brought up as to the jurisdiction of the district court and the justice court, we also have hopes that the legislature will implement the justice court and in our notes and comments we have laid down some guidelines, hopefully that we may have a system of justice courts that will, in effect, be small claims courts. And in the more populated areas, that they will be staffed or the justice of the peace will be a qualified lawyer. We did have to start the jurisdiction of the district court at three hundred dollars. This is a technical matter because the present statutes and the --

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only give the justice court jurisdiction up to three hundred dollars. If we started the district courts out with a thousand or three thousand dollars, which we discussed in the committee, then there would be a hiatus between the -- and it might be a year if this Constitution is adopted and goes into effect, it may be a year before the legislature meets and gets around to raising the jurisdiction of the justice court and you would have a hiatus of a few hundred dollars or a thousand dollars where you have no court in which to bring your action. So, we had to do this in order to not leave that vacant spot. I see it's about three o'clock and it's about the recess time and I have a great deal more that I would like to say, but I am going --but I think it's a bad thing to talk after recess time. Thank you.

CHAIRMAN GRAYBILL: The Chair would like to know -- the Chair would like to decide before recess, if possible, which of these plans we are going to follow. Now, I would like a show of hands of all the people who still expect to talk on whether we should go one way or the other on this first motion. One, two, three, four, five -- well, all right, in that case we won't attempt it. Now, what we're going to do is, when we are all through talking, we are going to have the chairman of the committee make a motion to consider the majority plan and then you can either adopt or not adopt that and if you vote against that, I will presume that you want to work on the min-

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ority plan. We will not do that, however, until you are through debating but I do hope you will keep your debate cogent to the issue of which plan and not to the specifics of the plan. I think we have had a lot of discussion now about the specifics and let's not discuss the specifics too detailed now because we will be discussing that after we get on one plan or the other.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I have the floor now so I'll say a couple of words first.

(Laughter)

DELEGATE ESKILDSEN: That was kind of tricky on my part but I wanted to express my pleasure in having had the opportunity to serve on the Judiciary Committee. I picked that committee for a specific reason because if you don't trust them particularly, get there where you can watch them, so that's what I did.

(Laughter)

DELEGATE ESKILDSEN: And, in watching them, I sat for many days and for many hours listening to what you have listened to today and all very interesting, but my mind finally got kind of confused. And, so, I finally decided that somewhere along the line I would have to sort out the things that were going on, so I took the first thing first. And it's this simple. In either plan you can amend or adopt, change or alter-

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ate as you see fit, so we can pretty near do anything with either plan. But, I picked the majority plan for one reason and that was because we elect. If you pick the minority plan, in a left-hand way you get to do it but to me it's appointive. It's that simple. I move we recess until three-fifteen.

CHAIRMAN GRAYBILL: All those in favor of recessing, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

(Committee in recess until 3:25 o'clock, P.M.)

CHAIRMAN GRAYBILL: The Convention will be in session. The Committee will be in order. Please close the rear doors, Mr. Monroe, or someone. Very well, is there further discussion on the issue of the majority or the minority report?

Mrs. Speer.

DELEGATE SPEER: I would say that I reject the majority report. I think the first criteria which we are to apply to the provisions of the new Constitution was whether it was flexible, and it seems to me that this majority plan for the judiciary completely lacks flexibility. In fact, it freezes into the Constitution the present system. I think there is no reason because we made perhaps a mistake in retaining all of

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the elected officials in the executive branch, that we should repeat the same error in this.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would Mr. Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE REICHERT: Mr. Berg, if we vote in support of the minority proposal, would it be possible to have the judges run for election instead of running against their record?

DELEGATE BERG: Well, I would anticipate amendments with regard to the selection of judges if the minority report, as it is written, is not accepted on the selection of judges. We do have in the minority an alternate plan which we will present if the present plan -- I think it's section seven -- is unacceptable to the Convention.

DELEGATE REICHERT: Thank you.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I rise in support of the minority plan for many reasons. One of them is that I am a member of the minority --

(Laughter)

CHAIRMAN GRAYBILL: Always, Mrs. Bowman?

DELEGATE BOWMAN: Always, Mr. Chairman.

(Laughter)

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DELEGATE BOWMAN: Thus far.

(Laughter)

DELEGATE BOWMAN: However, at this time, there are two compelling reasons why I hope that the body will decide to discuss the minority report. I agree with Mrs. Speer that the majority report is totally inflexible. Concerning the justices of the peace, by putting the justices of the peace into the Constitution, as the minority report has done, is going to make any reform which is done in that area completely piecemeal and complicated, whereas, reform, which we all agree is necessary, will be much easier if we go with the minority plan. I feel that in writing a Constitution we are doing our job poorly if we go into detail in setting up a court system. I feel it is unnecessary because the legislature can create courts when they are needed and if they are needed in special areas. I think that the majority makes this, if not impossible, it certainly makes it difficult. I feel that the majority has shown a decided lack of imagination in writing their report. I must take issue with my friend, Mr. Schiltz. I feel that under our plan he can, indeed, run for the supreme court if that is his desire. I feel that in the majority plan, history has proven we do not elect judges -- they are appointed -- and we, more or less like sheep, go and reappoint them. Therefore, I urge you to accept the minority proposal.

CHAIRMAN GRAYBILL: Now that everyone is here, the

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Chair would like once again to clarify the issue. The issue is whether or not to proceed down the majority or the minority report. Some mentioned to me at the recess that they thought that they would not then have the language of the opposite report available. That is not the case. You may amend as freely as you want to, but the point is, we are not going to proceed down both of them as we did before and we may want, in fact, to proceed down the minority report first. So, it's not going to forestall any debate, any discussion. So, the issue is really only whether to start with the majority or the minority report and proceed down it. That's what the committee has asked.

Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I think that the issue of which of the two reports to go down has been fully discussed, unless somebody else had something on the matter. This is not which plan you're adopting. It's just which plan you want to have presented to you for your amendment and your vote, and at this time, I will move that the Committee of the Whole start to consider the majority report of the judicial article section by section and I'll ask for a roll call vote on that measure.

CHAIRMAN GRAYBILL: Very well, Mr. Holland's motion is that we consider the majority report. I would like to say that if you sustain that motion, we will consider the majority report. If you defeat that motion, we'll go to Mr. Berg and

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the minority report.

Mr. Berg.

DELEGATE BERG: Mr. Chairman, as a substitute motion, I move that we consider the minority report.

(Laughter)

CHAIRMAN GRAYBILL: Very well, Mr. Berg has made a substitute motion that we consider the minority report, and I would also make that a roll call. Mr. Swanberg, for what purpose do you arise?

DELEGATE SWANBERG: I merely wanted to inquire, Mr. President, whether, as we consider either of the reports, if we'll be able to switch back and forth?

CHAIRMAN GRAYBILL: I don't know if you'd call it switching back and forth, but all of the language is available and anything may be amended as we go through, so, in a sense, the answer is yes.

Mr. Ward.

DELEGATE WARD: Mr. Chairman, I have risen about three times and I was cut off just before recess. I would like to say a few words, if possible.

CHAIRMAN GRAYBILL: Very well.

DELEGATE WARD: Much discussion has come about on the judicial article, as such. I am a doctor. I have performed surgery and transfusions both. I have also had surgery and had transfusions. I'd much rather give a transfusion than do sur-

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gery, either one. Secondly, there's been a lot of talk about elective process -- election of officials. As I see it, at the present, if we adopt the majority report, we will not give our voters any selection. This is what I call a railroad.

CHAIRMAN GRAYBILL: Very well, the issue is on the substitute motion of Mr. Berg that we begin and proceed down the minority report.

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, before recess, I understood that there were some seven or eight who still had comments to make relative to this and, quite frankly, I'd like to hear those comments before I make up my mind.

CHAIRMAN GRAYBILL: I haven't cut anyone off yet but if they don't stand up and take the floor, I'm going to put the vote.

Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I guess what I have to say has a bearing on which one of these to start on. I wouldn't take the time of the Convention to do this except that this is the field to which I have devoted my life and I feel more at home in discussing the problems of the legal profession than any other. There is clear agreement on the part of all that we do need good judges. It would be obvious that they would have to come from the practicing bar in the area in which they are to serve. The question is how to recruit them.

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They cannot be recruited by the attractions of high pay because the judges don't receive high pay. Nor by great prestige because the judges do not have that. Not by exciting work, because the work of the judge is anything but exciting. I think the real attraction for it to a lawyer is that it fills his sense of willingness to render a good public service. Now, what is involved in the decision of a lawyer who is considering whether to go on the bench? This is the thing I would like all of the lay people here to consider quite closely because it is one of the root problems in getting any man willing to get on the bench. I have known of this problem for many years in our community. In the first place, any one, any lawyer in private practice, is required to give up all of his private practice and his connections of every kind. He must sever himself totally from the private practice of law, which has provided the support for him and his family. In the four years that he serves on the bench, of course all of his clients go to other lawyers and make other connections and they aren't instantly available to him should he return to active practice four years later. He must face, during the years he is on the bench, the fact that he must undergo the type of ordeal that Mr. Schiltz very feelingly described, and I have the utmost sympathy for anyone who has to try and conduct a non-partisan campaign with such funds as he can save on his judicial salary. If he loses at the end of four years, you want to remember that he then be-

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gins at absolute rock bottom. He has no clients, no office, no library, no nothing. And if he's a man with a family and commitments for a mortgage on his home and other obligations, this is a pretty frightening thing to face. So, the fact of life is -- the simple, brute fact of life -- that there are not very many lawyers who have any kind of a stable, private practice and family obligations depending upon them, who are willing to give up all those things, to risk all of this for the purpose of going on the bench. And I suggest to you that this is primarily the reason why sixty-six out of eighty-four, if those be the figures, of the contests for judge were not contested. It simply has not been a very attractive position to get into. Now, the major issue seems to be that you dare not risk the appointment plan, and I just want to say that if these figures are right, that in the last twenty years in Montana when we have had the open election plan readily available to us, only eighteen out of eighty-four election opportunities were even sought by the voters. And even though the appointment plan we have involves no screening and is utterly and thoroughly political in its function, it seems not to have worked too badly because there has not been any feeling on the part of the public that there should be any contest most of the time with whoever has been the incumbent judge. This would teach me that if you have a plan that does involve some careful screening, does involve confirmation by the senate, and does involve a more se-

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cure future in rendering the public service on the bench, then it would help us to obtain a better quality of judicial candidate to begin with, and by this I mean, primarily, someone in the younger phases of his life who is willing to dedicate himself to a career of public service on the bench. And I think we all would find that those who have served on the bench for a substantial period of time learned to be, and do become, the careful, impartial judicial officers that it is the real target for all of us. And for that reason, I feel, like Mr. Toole, that the minority plan offers us greater advantages in this direction than does the majority plan.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, the question before us is whether we are going to consider the minority plan or the majority plan which has been offered to us. Thus far in the Convention it has been the practice of this body to base our considerations upon what are essentially restatements of existing articles in the Constitution. The majority plan is essentially a restatement of existing articles in the present Constitution. The minority plan is a new article which has been proposed by a minority of this committee. I suggest to you that if we now, at this stage of the Convention, abandon the mode of operation which we have adopted thus far, we are entering onto dangerous ground. The Convention, up to this point, has taken the position that it is the function of this body

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to proceed with caution and to make amendments to the existing Constitution and to improve it where we may, so that when we submit this finally to the voters, they will be faced with a document which is relatively known to them and which has little change but some improvement. If we now strike off onto new territory, after having already basically adopted the form of the two branches of government which we have considered, I suggest to you that we may create a judiciary which is entirely out of proportion to the executive and to the legislative branches which we have considered. If we are now at this point going to change and instead of restating or amending the existing Constitution, strike off and write a new Constitution, which in my opinion is what we should have done, then there is no question that we should, at this point, adopt by voice vote Mr. Cate's proposal and proceed to the next section.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, when a professor of economics arises to speak on a subject like this, I suppose the tendency is to dismiss him as simply a temporary refugee from the ivory tower. So, I will begin by qualifying myself. Over the past eight years or so, I have had considerable experience with the courts of Montana and of surrounding states. I have testified as an expert witness in twelve of the eighteen judicial districts of Montana. I have worked with lawyers in all of them. I have also testified in the courts of Alaska,

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Washington, Utah, Wyoming, South and North Dakota. So, I've had what might be called a worm's eye view of the operation of the courts and I suggest to this body that this question of the selection of judges is a very serious matter, one which we should approach with a good deal of conservatism and a good deal of thought. Now, I do not agree with everything that Mr. Holland said. I would like to enter what might be called a concurring opinion. I concur with the results. I think we should adopt, with certain changes perhaps, the majority plan. I came here prepared, I must say, to vote for the Montana Plan. I listened with -- in great detail, great length, the presentation made by the citizens' committee in Missoula and I said, if certain obvious defects in that plan could be patched up, if they could be fixed by the judiciary committee of this Convention, then I would go with them. But what Mr. Berg has said here today on the floor is, essentially, that they found it impossible to fix up that plan and therefore they intend to pass it onto the legislature. Now, I don't think that the legislature is going to be able to patch it up if they couldn't patch it up. Now, in my view, the Montana Plan has not been made viable by the minority and their plan is no better -- not as good, as a matter of fact -- because of the minority's acceptance of two false principles. One, the Constitution must be as brief and as succinct as possible; and, secondly, that everything possible should be left to the legislature. We

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should not legislate in the Constitution. These two principles have been used before and will be used again in this Convention, I think, to defeat the interests of the people. I believe that the majority proposal is a substantial improvement on the past and the present Constitution and contains the seeds of possible future improvement, and I therefore favor the majority proposal.

CHAIRMAN GRAYBILL: Mr. Heliker -- I mean, Mr. Kelleher.

DELEGATE KELLEHER: I never thought, Mr. Chairman, that I would disagree with my very learned brother, George Heliker. I only want to speak once today and I have a motion for an amendment that has been placed on all the desks and I would like to know whether it would be in order to do it -- to submit this amendment to the minority report at this time, and if not, I'll just sit down.

CHAIRMAN GRAYBILL: It isn't in order at this time as far as I can see, but I can't really tell because this is one desk that it didn't get placed on.

DELEGATE KELLEHER: Would a Page come up here, please, and I'll give them one.

CHAIRMAN GRAYBILL: Well, by nature, it's an amendment to section seven.

DELEGATE KELLEHER: Of the minority report, yes, sir. It resurrects the Montana Plan in part.

CHAIRMAN GRAYBILL: All right, well -- no, it's not

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in order.

DELEGATE KELLEHER: Thank you.

CHAIRMAN GRAYBILL: That does count, Mr. Kelleher, as once.

(Laughter)

CHAIRMAN GRAYBILL: I'm sure the body will sustain me in holding you to your word, Mr. Kelleher.

(Laughter)

CHAIRMAN GRAYBILL: All right, I see no one else up for debate and the issue is the substitute motion of Mr. Berg that we begin consideration with the minority report. Now, once again, the purpose of this is that the minority and the majority report are quite different in direction and scope. This is not like the legislative article where they were fairly similar, and since they are quite different, both the majority and the minority sides of the Judiciary Committee want to consider one or the other. That does not mean that you cannot amend anything that they put in, and if you want to amend it out of the other report, that's fine, and I guess you'll just have to make sense out of what you're doing. So, all we're doing is deciding where to start. And if you consider -- if you sustain Mr. Berg's motion, why, he will be the leader of the discussion. And if you sustain Mr. Holland's motion or if you vote against Mr. Berg's motion, Mr. Holland will be the leader, but you have free rein to amend. Now, the Chair does

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feel that you've had, and the Chair would like to express its judgment, that this body has had the benefit of a great deal of legal talent this morning and it seems to me that the Chair would be perfectly in order to rule very tightly on the fact that you're on the subject from now on. We don't need to discuss broad generalities but only the language. So, from now on, when we get going, we'll try and stay right on the point. Now, so many as are in favor of Mr. Berg's substitute motion that we begin proceeding on the judiciary article by using the minority report, please use the voting machines and vote Aye. So many as are opposed, vote No. A No vote is for the majority report. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, will you tally the vote?

Aasheim	-	Nay	Ask	-	Absent
Anderson, J.	-	Nay	Babcock	-	Absent
Anderson, O.	-	Nay	Barnard	-	Absent
Arbanas	-	Aye	Bates	-	Aye
Arness	-	Nay	Belcher	-	Absent
Aronow	-	Nay	Berg	-	Aye
Artz	-	Nay	Berthelson	-	Aye

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1	Blaylock	-	Aye	Furlong	-	Aye
2	Blend	-	Aye	Garlington	-	Aye
3	Bowman	-	Aye	Gysler	-	Aye
4	Brazier	-	Nay	Habedank	-	Absent
5	Brown	-	Aye	Hanson, R. S.	-	Nay
6	Bugbee	-	Aye	Hanson, R.	-	Nay
7	Burkhardt	-	Aye	Harbaugh	-	Aye
8	Cain	-	Aye	Harlow	-	Aye
9	Campbell	-	Aye	Harper	-	Aye
10	Cate	-	Aye	Harrington	-	Nay
11	Champoux	-	Absent	Heliker	-	Nay
12	Choate	-	Aye	Holland	-	Nay
13	Conover	-	Aye	Jacobsen	-	Absent
14	Cross	-	Aye	James	-	Absent
15	Dahood	-	Nay	Johnson	-	Aye
16	Davis	-	Nay	Joyce	-	Nay
17	Delaney	-	Nay	Kamhoot	-	Nay
18	Driscoll	-	Nay	Kelleher	-	Aye
19	Drum	-	Excused	Leuthold	-	Absent
20	Eck	-	Aye	Loendorf	-	Aye
21	Erdmann	-	Nay	Lorello	-	Absent
22	Eskildsen	-	Nay	Mahoney	-	Nay
23	Etchart	-	Nay	Mansfield	-	Aye
24	Felt	-	Absent	Martin	-	Aye
25	Foster	-	Aye	McCarvel	-	Nay

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McDonough	-	Aye	Schiltz	-	Nay
McKeon	-	Nay	Siderius	-	Nay
McNeil	-	Nay	Simon	-	Aye
Melvin	-	Aye	Skari	-	Aye
Monroe	-	Aye	Sparks	-	Aye
Murray	-	Nay	Speer	-	Aye
Noble	-	Nay	Studer	-	Aye
Nutting	-	Nay	Sullivan	-	Nay
Payne	-	Aye	Swanberg	-	Aye
Pemberton	-	Aye	Toole	-	Aye
Rebal	-	Nay	Van Buskirk	-	Aye
Reichert	-	Aye	Vermillion	-	Nay
Robinson	-	Aye	Wagner	-	Nay
Roeder	-	Aye	Ward	-	Aye
Rollins	-	Aye	Warden	-	Aye
Romney	-	Nay	Wilson	-	Absent
Rygg	-	Aye	Woodmansey	-	Nay
Scanlin	-	Excused	Mr. Chairman	-	Nay

CLERK SMITH: Mr. President, forty-nine voting Aye, thirty-seven voting No.

CHAIRMAN GRAYBILL: Forty-nine having voted Aye, thirty-seven having voted No, Mr. Berg's substitute motion prevails and we will proceed with the minority proposal, the text of which is on page forty in the booklets and the comments which start on page forty-six of the booklets. Will the Clerk

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please read section one of the judiciary minority proposal? Page forty. Will you please read section one, Mr. Clerk, on page forty?

CLERK SMITH: (Reading) Section one, Judicial Power: The judicial power of the state is vested in a supreme court and district courts and such other courts as may be provided by law.

CHAIRMAN GRAYBILL: Very well. Now, for what purpose do you arise, Mr. Habedank?

DELEGATE HABEDANK: Mr. President, I wish to explain my failure to vote. I am not wishy-washy. I am willing to take a stand. But Mr. Tom Ask, who is in favor of the majority proposal, had to leave and he requested that I abstain because pairing was not allowed, and I therefore did.

CHAIRMAN GRAYBILL: Very well, your explanation will show on the journal.

Mr. Berg.

DELEGATE BERG: I move the adoption of section one of the minority report. The minority report on section one is as brief, is as intelligible as the section one of the proposed article of Mr. Cate. In fact, it's nearly identical, except this -- that it vests judicial power not only in the supreme court but also in the district court. It recognizes, then, two constitutional courts, being the supreme court, which as you will note is a court of final appellate jurisdiction, and

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in the district court, which is the principle single trial court. Now, I should like to observe this, and I would like you to observe this in considering section one. It is nearly identical with section one of the majority report, with the exception, of course, that it does not mention the justices of the peace as a constitutional court. It is the belief of the minority that justices of the peace should be left as a legislative court so that they are a flexible court, so that over the years they may be adjusted for the complexities of rural and urban situations. In other words, in rural areas, justices of the peace will have to be an entirely different court than they may eventually be within the cities or the urban areas, and for this reason, if we lock them in the Constitution and we set their jurisdiction in the Constitution, we render them that much more inflexible. That was the reason that the minority omitted them. You will note that in the minority report only two courts are considered constitutional courts, which will not be, as far as jurisdiction or power is concerned, interfered with by the legislature or the executive, and this, the minority believes, is consistent with the separation of powers. In other words, the judicial power will be vested by the Constitution in the judiciary and in the supreme court and in the district court. The additional judicial power will, so far as the justice courts are concerned, be left for the legislature to delegate. Only to that extent does the legislature

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delegate powers and not to either the supreme court or the district court.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Berg's motion that section one of of the judiciary article minority report, page forty, be adopted. The proposal is: The judicial power of the state is vested in a supreme court and district courts and such other courts as may be provided by law.. So many as shall be in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Now, Mr. Berg, since you didn't move that that be reported, I wonder if you would put it over again?

DELEGATE BERG: I now move that this committee, after having had consideration of section one of the minority report, when it does rise and report, adopt section one of the minority report.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. So ordered. Will the Clerk read subsection -- or section two?

CLERK SMITH: (Reading) Section two, Supreme Court

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Powers: The supreme court shall have final appellate jurisdiction and general supervisory and administrative control over all courts. The supreme court may make rules for the practice of law and judicial administration in all courts. The supreme court may make rules for the practice of law and judicial administration in all courts. The supreme court shall have such power to make rules of procedure as may be provided by law. The supreme court shall have original jurisdiction to issue, hear and determine all writs appropriate to the exercise of its jurisdiction, including the writ of habeas corpus. (End reading) Mr. Chairman, section two.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I move that when this committee does rise and report that it adopt, after having under consideration section two of the minority report, that it adopt the same. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Section two deals with the appellate power of the supreme court. It defines the appellate court power as final appellate power. We used the word, final appellate power with specific reference to the supreme court and with the idea that by vesting final power in the supreme court, it not only indicated a place where litigation would finally come to rest, but that it would permit the creation in the future, if it became necessary, of intermediate appellate courts

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and the word, final, would be so construed. With regard to the rule making power of the supreme court, we have categorized or classified that into two parts: that which relates to the internal function of the judicial system and, as I indicated in my earlier remarks, relates to rules of practice, the conduct of lawyers before the court, their admission to practice and their control of practice. It would, insofar as administration of all courts is concerned, it will permit the centralized administration of the judicial system and vest it in the highest court, the supreme court. As I indicated to you, we are one of thirteen states that do not have it; we are now one of three considering whether we should have it. Insofar as the rules of procedure are concerned, we have very carefully circumscribed and limited the power of the supreme court to make rules. Indeed, in effect, we have left the rule making power to the legislature but, in effect, permitted the legislature, as it has in the past, to give to the supreme court rule making power but we have limited it to the rules of procedure because of our fear of what might occur if we gave them rule making power in the field of evidence. Again, the last paragraph relates to the original jurisdiction of the court to issue writs. Now, we have said that they may issue and hear and determine all writs appropriate to the exercise of its jurisdiction. Note that we have specifically included the writ of habeas corpus. About all we've done insofar as the old Constitution is

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concerned is this, that we have eliminated the enumeration of the various writs of certiorari, mandamus, prohibition, and so forth. We do not think that's necessary because we believe that all writs necessary for the exercise of its jurisdiction is adequate. Indeed, as we examine the constitutions of other states, that is almost consistently the language used for appellate jurisdiction insofar as original or remidial writs are concerned. However, with regard to the writ of habeas corpus, because we do think that that is a writ that is so essential to the preservation of the liberty of an individual, that it ought to be emphasized by including -- and specified within the power of the supreme court to issue such a writ. We, however, did not think it necessary to legislate on that and provide for the procedure of the issuance of the writ, as does the old Constitution. We therefore eliminated the procedural provisions but we kept the writ in tact. We felt that, in spite of the fact that within the Bill of Rights it is said that the writ of habeas corpus may not be suspended except in case of invasion, that, nevertheless, it ought to be re-emphasized in the judicial article that it ought to be a writ that not only the district court but also the supreme court can on occasions issue if necessary.

CHAIRMAN GRAYBILL: Mr. Berg, the Chair does not wish to debate, but I would like to inquire of you about this section and without objection, I would like to ask you a question.

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Will you yield?

DELEGATE BERG: I yield.

CHAIRMAN GRAYBILL: In line eleven, page forty, you use the word, final, which I heard you explain. I have checked the judicial article of the present Constitution and it does not use the word, final, and I have checked the United States Constitution, Article Three, and it does not use the word, final, and I am aware of what you say about inferior court -- or about intermediate court. My question is this: Are we likely to confuse people that we have somehow done away with the right to appeal from the Montana supreme court to the U.S. Supreme Court cases which involve federal questions?

DELEGATE BERG: Oh, I would not think so because that would be controlled entirely by the United States Constitution which I think at all points would be superior.

CHAIRMAN GRAYBILL: And may I ask you another question?

DELEGATE BERG: Yes, I yield.

CHAIRMAN GRAYBILL: Granting that it wouldn't do away with the federal jurisdiction, which I am sure you and I would agree to, do you believe that it is not misleading to the public to say that it's final?

DELEGATE BERG: No. In fact, I think it better specifies insofar as jurisdiction within the state of Montana is concerned that this is a court of last resort.

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CHAIRMAN GRAYBILL: Very well.

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I am on page forty-seven, which is the comments on the minority proposal, and I would move to strike from section three -- or, section two of the minority proposal, lines twenty-three, twenty-four, twenty-five and twenty-six, which provide that the supreme court may make rules for the practice of law and judicial administration in all courts, and that the supreme court shall have such power to make rules of procedure as may be provided by law. The supreme court at this time does presently have this power but it is legislative power. It is subject to change by the legislature, and what these two paragraphs mean is that, whoever controls the supreme court of the state of Montana controls the entire legal profession of the state of Montana, and I think that's a dangerous thing to do. Lawyers have traditionally fought for independence and have maintained independence. Over the years, there has been a movement in the state of Montana to, what they call, integrate the bar. In other words, make all lawyers members of the bar. By mandate, you would have to be a member of the bar association in order to practice law in Montana, and it's a method of controlling the lawyer who doesn't agree with the establishment -- this type of thing. And, it's a dangerous thing to do. And I think it's unnecessary to place this type of power in our court without having the right of the

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legislature to regulate it, and I make that amendment for that purpose. Thank you, very much.

CHAIRMAN GRAYBILL: Very well, Mr. Cate's amendment deletes lines twenty-three to twenty-six on page forty-seven, or it deletes lines thirteen through sixteen on page forty, and has the effect of taking the rule making power out of section two. Is there discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President, would you give consideration to the fact of whether we should see if the minority would mind subdividing these different matters as we go along so we could treat them -- I think it may be even more important as we get further down. We're covering an awful lot of ground in each sentence here, which really are different subject matters. It just --

CHAIRMAN GRAYBILL: Well, Mr. Davis --

DELEGATE DAVIS: Would you consider that, Mr. Berg?

CHAIRMAN GRAYBILL: Mr. Davis, the rules say section by section. Now the way, it seems to me, to get at your problem is, Mr. Cate has taken two sentences out. If you want only one, make a substitute motion to delete only one and I'll recognize it.

DELEGATE DAVIS: Oh, I mean if they will subsectionize the first paragraph -- this deals with different subject matter as a subsection, is all. I don't -- I'm not moving that.

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I just wonder if you think it would be advisable?

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Insofar as I'm concerned, as a matter of style, if you want to call it subsection one, subsection two, and subsection three, I have no objection. And I really believe that when and if this gets to Style, some of those form changes will be made, but I do believe that each sentence contained within the paragraph relates to the general subject matter as relating to the powers of the supreme court.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I don't have any strong hope that this expression of mine is going to receive a favorable ear. However, I have the feeling that we're getting at this a little bit faster than I had hoped we would. Mr. Holland has been off the floor for the last few minutes, and he's in effect the floor leader for the majority, attempting to draft an amendment that's quite a ways down the road. In the meantime, I think there are some rather important things that are going by that we aren't -- that are rather technical and I think we should have until our next session on Tuesday to start on the rest of this debate.

CHAIRMAN GRAYBILL: The Chair is going to rule you out of order at this time. We are considering an amendment to delete lines twenty-three to twenty-six.

Mr. Joyce.

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DELEGATE JOYCE: Mr. Chairman, I move as a substitute motion that section two, supreme court powers, be amended after the word, powers, in line twenty, by inserting the word, one -- or maybe we can have parenthesis, one, parenthesis. And I insert -- I further move that in line twenty-three, that we insert before the word, the, parenthesis, two, close parenthesis. And I further move that on line twenty-five we insert the parenthesis, three, close parenthesis. And on line twenty-seven that we insert the word -- or, insert a parenthesis and the letter or number, four, close parenthesis, before the first word, the.

CHAIRMAN GRAYBILL: Very well, your substitute amendment is accepted and the issue is now on the substitute amendment to number the paragraphs of section two. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, say No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Very well, since that was a substitute motion, Mr. Cate, that wipes off your amendment and we are now discussing section two, sub one. The supreme court shall have final appellate jurisdiction and general supervision and administrative control over all courts, period.

Mr. Schiltz.

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DELEGATE SCHILTZ: Mr. Chairman, I am using line forty, or page forty, which happens to be my habit, I guess, and on line eleven of page forty and line twelve, I move that section two of the judicial article be amended by striking the words, and general supervisory.

CHAIRMAN GRAYBILL: Mr. Schiltz, your motion is well taken and you may discuss it. You have striken the words, and general supervisory -- in your amendment.

DELEGATE SCHILTZ: Yes. May I speak to it?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE SCHILTZ: This is an old hangover from the 1889 Constitution and it looks just like general words but as a result of those three magic words, the supreme court in 1892, in a case that might have been the Boston-Montana Copper Company case -- I think that's it -- invented a writ, an extraordinary writ, called the writ of supervisory control whereby they controlled a judge and his court in the city of Butte -- this was part of the war of the copper kings. Since then, the writ of supervisory control has been used very sparingly and every time the supreme court of Montana used it, up until about the last twenty years, it said, this writ must be used very carefully and only under unusual circumstances. In the last sixteen or seventeen years this writ has been used with great frequency when an appeal would have lain just as well or when some other appropriate writ would have served the same purpose. I think

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that you will find that the district judges find themselves universally insulted by the use of the writ of supervisory control. It isn't used as carefully and as sparingly as it used to be and that writ can be eliminated by the simple expedient of striking the words, and general supervisory.

CHAIRMAN GRAYBILL: Is there discussion of Mr. Schiltz' amendment to eliminate the words, and general supervisory?

Mr. Aasheim.

DELEGATE AASHEIM: (Inaudible. Microphone not turned on) -- Mr. President.

CHAIRMAN GRAYBILL: All right, what's your point?

DELEGATE AASHEIM: I think we are getting confused by jumping back and forth here. Why don't we stay on either one area or the other? We have the comments on page -- what? -- forty-seven, and I would like to move, if it's in order, that we stay on the minority proposal and stay with the comments beginning on page forty-six.

CHAIRMAN GRAYBILL: You may make your point, Mr. Aasheim. I don't feel it's in order. The Chair has a reason for using the other one. You may use whichever you like and I'll try and keep both references, but it's not in order. We have a motion before us.

Mr. Berg.

DELEGATE BERG: In answer to Mr. Schiltz, I asked the intern to determine how many times the writ of supervisory con-

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trol has been employed by the supreme court. Since 1900, it has been used twenty-one times. That is, it has been applied for twenty-one times. It has been issued fifteen times. It has been denied six times. And the case to which Mr. Schiltz had reference with regard to the so-called war of the copper kings was Hinsey versus the District Court, and in that case the writ was refused but the court laid down the principles under which it will be issued, and they are these: the writ of supervisory control is one to be seldom issued and then only when other writs may not issue and other remedies are inadequate, and when the acts of the court complained of -- complained of as threatened will be arbitrary, unlawful, and so far unjust as to be tyrannical. Now, it seems to me that the employment of such a writ, whether it's unique in Montana or not, has a fitting place within our jurisprudence. It is carefully circumscribed by the court. It has not been used flagrantly; it has not been abused. Moreover, the words, general supervisory control, are not limited in spite of the use of the writ of supervisory control to the use of that as a method of simply controlling litigation in the lower courts. The words, supervisory control, when coupled with administration, meaning general supervisory control and administration include the vital need for supervision of administration of the entire judicial system and, as I think I have emphasized, we are one of the few states that does not employ it, and if we fail to encourage

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its use or at least to enable it here now in our court system, we will have taken a step backward. We will not be in keeping with any other judicial system in the country.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, fellow Delegates, I rise in opposition to Mr. Schiltz's motion to do away with the fundamental writ of supervisory control. Of those twenty-one times that the writ has been asked for in our court, I think I have had something to do with about five of them, and we've got it once out of the five times we've asked for it. And, I'll tell you why you need the writ of supervisory control and why it's good for the people to retain the writ of supervisory control, and why I favor the minority report in this regard. If you run into a situation in a law suit where a judge, a district judge or a JP, absolutely ignores the law, if you did not have the writ of supervisory control you would have to go all the way through the trial and then appeal it to the Montana supreme court. With the writ of supervisory control you can say, Judge, you're wrong and I'm going upstairs and get a writ of supervisory control to make you right, and you don't have to go through all the expense of having a trial. Now, if you're a big company, you don't want the writ of supervisory control. If you've got a lot of money -- and money has a lot to do with law suits, you know -- if you've got a lot of money, you don't want the writ of supervisory control. But for the people, the

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little people, they need the writ of supervisory control because it's a way to keep the judges honest and it's a way to avoid having to go all the way through a trial and all the expenses of an appeal in order to get an issue decided. And I think that -- I've tried to explain here what a writ of supervisory control --what it does and what it's used for, and I think it is something that is fundamental to our system and that it's effective and that it's something that ought to be retained, and I commend the minority report for recognizing that and retaining it and would ask you to do likewise. Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, would Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: Yes, I yield.

DELEGATE HABEDANK: If your substitute, or if your amendment is adopted, what power would the supreme court have to meet those situations that Mr. Cate was referring to?

DELEGATE SCHILTZ: Well, forty-nine other states manage to get by with a writ of prohibition. That's the short answer.

DELEGATE HABEDANK: Thank you, Mr. Schiltz. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: I would like to state that Mr.

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Cate told you that when the judge makes a mistake, you say, Judge, I'm going upstairs to get a writ and make you right, I would like to say you may say, Judge, I'm going upstairs to get a writ -- that you'll just try to get it; you may not get it.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I wonder if those figures are right? I've asked for it, that I can think of, I think three times and gotten it once, but it seems that Mr. Cate and I account for one-third of all the writs that have ever been granted. It's hard for me to believe that. I suppose it may be. Maybe we're hyperactive.

(Laughter)

CHAIRMAN GRAYBILL: Stick to the subject, Mr. Arness.

(Laughter)

DELEGATE ARNESS: Excuse me, Mr. Chairman. I support Mr. Schiltz's comments. The writ is used in cases where the draftsman is caught between whether he should use certiorari or prohibition. I submit to the Convention that the other states are able to get by and the lawyers there able to make up their minds, we ought to be able to make up our minds just as well here and get along without this thing.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I would like to close on my amendment, if I can.

CHAIRMAN GRAYBILL: If you think you need to, you

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may.

DELEGATE SCHILTZ: Well, quite frankly, Mr. Chairman, I'm looking for anything I can find in section one, two or three to stall for a little time. This --

CHAIRMAN GRAYBILL: Then close quickly, Mr. Schiltz.

(Laughter)

DELEGATE SCHILTZ: This I consider to be a well taken motion, however, because I have been offended by the writ of supervisory control ever since I was in law school. I hope we strike it.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Schiltz's motion, which is to take out the words, and general supervisory, which has the effect of taking out the writ of supervisory control -- so many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it.

Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, would Mr. Berg yield to a question, please?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Mr. Berg, in the sentence it says, and administrative control over all courts. Does that mean

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that the supreme court, then, would take the administrative control from each of the district courts, or how extensive did you have in mind on this?

DELEGATE BERG: It is -- I would say it is broad enough to include administration in all courts. It is the terminology generally employed by other states in the creation of centralized administration of the judicial system.

DELEGATE DAVIS: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Would Mr. Berg yield to another question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Would this deprive the local district judge then of the right to call in a judge, or would the supreme court take over the calling in of judges in all the districts of our state?

DELEGATE BERG: No, that would not result in that because we have other provisions within the minority article specifically covering the disqualification or calling in of other judges.

DELEGATE DAVIS: What administrative -- Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Will Mr. Berg yield to another question?

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DELEGATE BERG: I yield.

DELEGATE DAVIS: Would you amplify -- this is very important, it seems to me, to the judges and I want to explain when I get home to my judge exactly what administrative control you want the supreme court to take over that he now has.

DELEGATE BERG: Well, I can't specify in particular what exact administrative control they may exercise, but I do know this. I am more concerned about the lower courts that have for so many years been left as sort of a sick cousin of the judicial administration system. I visualize that the supreme court can assist them in their training; they can assist them in providing methods of keeping their dockets, methods of proceeding on arrests. I think the supreme court, through administration, can do a great deal toward improving the administration of justice on the lower level. I don't contemplate that the supreme court will ever find it necessary to do very much in the way of administration so far as the general jurisdiction of the district courts are concerned.

DELEGATE DAVIS: Thank you, Mr. Berg.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I move to amend subsection one, section two -- I'm on page forty-seven at line twenty-two -- by striking the two words, and administrative.

CHAIRMAN GRAYBILL: Very well.

DELEGATE McNEIL: Mr. Chairman.

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CHAIRMAN GRAYBILL: That's on line twelve of page forty, and that's on line twenty-two on page forty-seven. Go ahead.

DELEGATE McNEIL: Mr. Chairman, these two words that have caused concern to Delegate Davis were an integral part of the Montana Plan. I listened to several persons testify and they all agreed that part of this administrative control over district courts was intended to give the Montana supreme court the power to take the judge from Ekalaka and assign him to Wisdom and then up to Libby and down to Two Dot. This power, although it sounds as though it is just buying the paper and the pencils, because it is labeled administrative, this power could be abused by a supreme court to, in effect, get rid of any district judge they wanted to get rid of by simply assigning him anywhere in the state that they wanted to. And, I submit that this is a very dangerous control over our district courts that should not be given to our supreme court.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Would Delegate Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE JOYCE: Mr. Berg, did Chief Justice Harrison testify before your committee?

DELEGATE BERG: Yes, he did.

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DELEGATE JOYCE: And --

CHAIRMAN GRAYBILL: You may ask a series of questions.

DELEGATE JOYCE: All right.

(Laughter)

DELEGATE JOYCE: What did Chief Justice Harrison have to say about whether or not he, being the present incumbent in that -- as chief justice of that court, whether he wanted to have administrative control over the district courts?

DELEGATE BERG: Well, as I recall, the Chief Justice liked the Montana Plan and would have preferred to create an administrative office, an independent office, for the administration of the courts. I am sure that he wanted the power, however, for the appointment of that administrator and the control of him left with the court.

DELEGATE JOYCE: I see. Was it his position that he didn't want -- that it was an integral part of giving him, the supreme court, administrative control -- then the sine qua non would be that they appoint the man that they were going to delegate that to, is that correct?

DELEGATE BERG: That would be correct.

DELEGATE JOYCE: And if they didn't get the election of the clerk of the supreme court, then they didn't want the administration -- administrative control, did that also follow?

DELEGATE BERG: No, that did not follow. As a matter of fact, the supreme court, as I understood the Chief Jus-

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tice when he testified, didn't really care whether the clerk was appointed or elected. He felt that most any clerk they had he could work with in administration of the court system.

DELEGATE JOYCE: Would Mr. Berg yield to another question?

DELEGATE BERG: Happy to.

DELEGATE JOYCE: Would you interpret this power, then, to control the administration of the supreme court, the power to control the clerks of the district court?

DELEGATE BERG: No, I would not interpret it to mean that because I believe that as the article is written, the duties of the clerk of the district court are as provided by law or prescribed by the district judge, so I would not expect the supreme court to exercise power there.

DELEGATE JOYCE: But -- you wouldn't expect them to--

DELEGATE BERG: Well, I don't think they could. I'll answer it that way.

DELEGATE JOYCE: Do you think you've guarded against that they can?

DELEGATE BERG: I think that providing that the duties of the clerk of the district court will be as provided by law and as prescribed by the district judge, yes, that's the limit of the power in regard to the clerk of court.

DELEGATE JOYCE: Will you yield to another question?

DELEGATE BERG: Yes.

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DELEGATE JOYCE: Does the -- the United States supreme court does undertake, through the administrative office of the courts, to administer the local federal courts around the nation, don't they?

DELEGATE BERG: Yes, they do.

DELEGATE JOYCE: And that power to do that is not given to them, though, by the United States Constitution, is it?

DELEGATE BERG: No, very few powers that the federal courts exercise come from the Constitution.

DELEGATE JOYCE: Is that administrative office of the courts set up by the laws of Congress or by the court on its own motion, or do you know?

DELEGATE BERG: I do not know. I rather think it's by the court on its own motion, but I don't know.

DELEGATE JOYCE: Well, wouldn't it be better to have it set up by the laws of Congress, or what is your opinion on that?

CHAIRMAN GRAYBILL: I'll rule that out of order.

DELEGATE JOYCE: I strike. May I speak, then, in support of the substitute motion to strike?

CHAIRMAN GRAYBILL: Very well, Mr. Joyce.

DELEGATE JOYCE: It seems to me that this is a dangerous thing to write into the Constitution. I think that the legislature, if the time comes that it is necessary to admin-

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ister all the courts of the state out of the supreme court, that the people speaking through the legislature ought to make that decision. And I think further than that, that it is really impractical to expect the supreme court justices to administer all of the courts. I don't doubt very much if they want to. They don't have the time to do it. The chief justice is busy enough just managing the docket of the court itself. He's primarily elected to write opinions and study cases and it just seems to me not only unwise constitutionally to write it in but it's impractical to impose that duty upon them at this present state of -- and in the foreseeable future, and therefore it should be left to the statute and I support the amendment to delete.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. McNeil's amendment to strike the words, and administrative, on line twelve of page forty, to have the effect in subsection one of taking out administrative control over the courts. So many as are in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it.

UNIDENTIFIED VOICE: Division.

CHAIRMAN GRAYBILL: Division -- very well. So many as are in favor, say Aye -- or, vote Aye on the voting machine

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and so many as are opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Fifty-one having voted Aye, thirty-one having voted No, the motion passes. The section now reads: The supreme court shall have final appellate jurisdiction and general supervisory control over all courts.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President and members of the assembly, it looks to me like we're giving the court powers before we know how they are to be selected. Now, later on we are going to determine whether they are going to be elected by the people or by some body, and I think, in my judgment, it would make a difference how much power we are going to delegate to them, so I'm going to move that we pass consideration of section two until our next day, which will be Tuesday.

CHAIRMAN GRAYBILL: Two, sub one, two, three and four?

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: Mr. Aasheim's motion is to pass consideration of section two, sub one, two, three and four until when?

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DELEGATE AASHEIM: Until Tuesday.

CHAIRMAN GRAYBILL: Until Tuesday at nine A.M.? It has to be a time certain.

DELEGATE AASHEIM: Nine A.M.

CHAIRMAN GRAYBILL: Tuesday at nine A.M. The issue is on Mr. Aasheim's motion to pass consideration of section two, sub one to four, until Tuesday at nine A.M. So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Please use the voting machines. Vote Aye on the voting machine if you are in favor of it; vote No if you are against it. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Vote's closed. Forty-seven having voted Aye, thirty-five having voted no, we will pass consideration. Mr. Clerk, will you read section three of the minority report?

CLERK SMITH: (Reading) Section three, Supreme Court Organization: The supreme court shall consist of one chief

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justice and four justices, a majority of whom will be necessary to promounce the decision, which must be in writing and signed by the majority. The legislative assembly may increase the number of justices from five to seven. District judges shall be substituted for the chief justice or the justices in the event of disqualification or disability, in any cause, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice of the supreme court. (End reading) Mr. Chairman, section three.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that when this committee does arise and report after having under consideration section three of the minority report that it adopt the same. Mr. President.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Section three relates, as you will note, to the composition and the organization of the supreme court. It provides for one chief justice and four associate justices. It provides that, in order to pronounce a decision, a majority of those justices must not only agree but they must put their decision in writing and they must sign it. Here, I should like to pause and say, this is a slight change from the present Constitution and it is designed to prevent what has been -- become a rather prevalent practice of what are known as per curiam decisions, that is, decisions handed down

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by the court unsigned by any member and presumably but not necessarily one agreed to by all of the justices. This will provide that at least a majority of those pronouncing a decision will put it in writing and sign it. The second provision is simply a permission for the legislature, if it finds it necessary in the future, to increase the number of justices from five to seven. The last paragraph is essentially the same as our present Constitution and simply provides that in the event of the disqualification or the inability of a supreme court justice to hear a matter, a district judge may be called in and sit in his place and his position on that court will be as effective as though he were an elected member.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President -- Mr. Chairman, I move to strike lines twenty-five and twenty-six on page forty of this proposal.

CHAIRMAN GRAYBILL: Mr. Mahoney has made a -- has proposed an amendment, the effect of which is to strike the sentence that says: The legislative assembly may increase the number of justices from five to seven.

Mr. Mahoney.

DELEGATE MAHONEY: All we are doing here is, it won't be but one session of the legislature till they be in here to go up to seven, and we just as well hold the line now, and five can get by, and if we ever get to a population of a

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million and a half, or two, then we'll re-amend the Constitution, but let's don't put it out there now because they'll be in the next session trying to get it.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I rise to support the amendment by Delegate Mahoney by striking that sentence, for a different reason. My reason for wanting to strike this is to take away from the legislature the power to pack the court and to influence it with the political philosophy of a legislature. If we have a three to two split on some particular philosophy, any legislature could, by the creation of two more justices, impose its philosophy on the court.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I think that the committee's proposal to increase the number of judges from five to seven is a reasonable one, especially in view of the often times advanced ages of the judges. This would give flexibility for cases where a judge is disabled or sick or unable to sit, and also opens up the possibility that the court may at some time be organized into a court of appeals, so there may be some other functions for some of these judges to serve. In the event that we do give these judges our administrative powers and other things, we're going to have to have a whole gang of these fellows in order to do their job and still write some opinions. I think that seven is a reasonable number.

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CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would like to submit a substitute motion at this time, starting on line twenty-one, reading as follows: The supreme court shall consist of one chief justice and six justices, raising the supreme court now by constitutional mandate to seven members of the court, Mr. Chairman.

CHAIRMAN GRAYBILL: In other words, you are going to change the four to six and are you then going to still eliminate the sentence, the legislature may increase it from five to seven? Right?

DELEGATE DAHOOD: Yes, and eliminate that sentence.

CHAIRMAN GRAYBILL: Very well, Mr. Dahood has proposed a substitute motion which changes the number, four, to six in line twenty-two on page forty, and a comparable change on page fifty, and it would still strike the second sentence that the legislative assembly may increase the number from five to seven, since that would no longer be necessary.

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, there is a very valid reason as to why the Citizens' Conference and the Montana Plan had in mind that the legislature should have authority to increase the court to seven. The appellate load of our supreme court is increasing by large measures with each passing year. The increase has been such that each justice has been compelled

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to have on the payroll of the Montana supreme court a law clerk, a graduate law student. It is very true that our supreme court has been able to release reports and to state with some degree of pride that the court is on a current basis. But there are also many lawyers throughout the state of Montana that will submit to you that quantity of decisions has been used in place of quality in decision simply because the five justices of our supreme court do not have sufficient time to judge the matters before them in a true, solemn, judge-like fashion. And if we increase the court to seven now, recognizing that they have this huge appellate responsibility each year, we are going to increase the quality of justice in Montana and increase the quality of our appellate process. I would think that perhaps the proponents of the majority report and the minority report can provide us with statistics, facts and figures as to the appellate burden upon the court at this time and I would certainly appreciate their comment as to whether or not we would increase the ability of our supreme court to render a better quality of justice in their appellate matters if they had additional justices that could work on the appellate matters brought before them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The issue is on Mr. Dahood's amendment.

Mr. Davis.

DELEGATE DAVIS: Mr. President, would Mr. Berg yield

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to a question, please?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Mr. Berg, under your disqualification, would an additional judge then have to be called in to sit on a case?

DELEGATE BERG: Well, you would call in a district judge, yes. If you -- you're talking about now the supreme court?

DELEGATE DAVIS: Yes, the supreme court.

DELEGATE BERG: Yes, it would be a district judge who would be called in.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Dahood's amendment -- substitute amendment -- which has the effect of replacing the word, four, for the word, six, so we would have a supreme court of seven and therefore leaving out the second sentence, second sentence in section three. So many as are -- oh, Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, may I -- would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ARONOW: Mr. Dahood, did you contemplate doing away with the law clerks that the supreme court justices

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now have in order to kind of make up in cost for having the extra two justices and having the supreme court justices doing their own work?

DELEGATE DAHOOD: No, it is not my contemplation that the law clerks should be eliminated, but I think there ought to be enough justices so that all of the opinions rendered represent the considered work of a particular judge and consequently the judicial opinion of our supreme court.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I resist the amendment of Delegate Dahood. I do not believe the state of Montana needs or can afford additional justices of the supreme court at the present time. My recollection that the estimated cost of the supreme court and the district courts of the state of Montana for the next biennium will be one million eight hundred thousand dollars, in round numbers, and this would increase it materially, and I trust and I ask that when this vote is taken that there be a roll call. I ask for seconds.

CHAIRMAN GRAYBILL: Mr. Eskildsen, you were up.

DELEGATE ESKILDSEN: Mr. Chairman, I rise in opposition to this motion. Whichever plan we accept, I am sure it has been pointed out to you very plainly that we are going to upgrade the courts. As we upgrade the courts, there is no doubt in my mind that the chief justice and the four justices will be able to do a lot more work than they have been doing

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before. That's what we're going to get paid -- that's what we're paying them for. And I feel very strongly that if we want a good court, all we've got to do is give them some good helpers, and where in the world else are young attorneys going to learn how to be good judges if they don't have a chance to work in the courts to find out how. This is the reason I resist increasing it to seven, along with the money part of it.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I do not think the money argument is valid when we are determining whether or not we can increase the quality of justice. You never ration justice in a free society simply to show that you have saved something from an economic standpoint. You are concerned first of all whether or not you are giving maximum protection to the rights of the individual. I think something should be explained to the non-lawyer Delegates. The appellate system in Montana is different than the appellate system of the federal judiciary. When you proceed to the court of last resort in the nation's capitol, you do not have automatic appeal. You file what is called a writ of certiorari, and those judges will then determine whether or not, in their judgment, the issue that you present warrants their consideration on appeal. This is not true in the state of Montana. Before the Montana supreme court the appeal is automatic and in our trial courts any more, it just seems that with the lack of certainty that has developed at the

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appellate level, every time there is a losing party, which is in every case, in almost every instance if there is any substance involved, the matter is being appealed. And, I would submit that if we are going to consider this matter properly, perhaps we ought to have some statistics from the office of the clerk of the supreme court, and perhaps we ought to have some statistics from the court itself as to what the work load is at the moment. I don't have those statistics at hand, but I do know their work load is too much, and I do know that we are getting a great deal of quantity, in many instances without quality, and consequently we don't have the certainty that the law requires and our appellate system is breaking down at the moment because everybody is appealing the adverse decision to the supreme court. And, I call upon the chairman of the judiciary committee and I call upon the proponents of the minority plan to tell us whether or not we ought to have some statistics on this particular point and, if they have them, to give them to us now, and if they don't have them, perhaps to conduct that particular survey so that our decision on this motion can be an informed one. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, first I must tell you that so far as the minority is concerned, we do not have the statistics as to what the work load in the supreme court is at the present time, but, like Mr. Dahood, having been there many

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times in the last year or so, I recognize that the work load in the supreme court is rapidly increasing. On the other hand, I disagree with Mr. Dahood as to the necessity of now in this constitutional document fixing the number of supreme court justices at seven. I do not believe that that is necessarily justified at this time. Moreover, I am conscious of the cost and I think the cost is properly left to the legislature. Accordingly, the minority report leaves the increase of these justices to the legislature because of this question of cost. Now, I agree with Mr. Dahood, cost ought not to be the price of justice but nevertheless, as a practical fact, it is. And I disagree with Mr. Mahoney that the legislature is going to quickly and certainly increase the number of judges from five to seven. I think that is especially true if men like Mr. Mahoney are there as a watchdog of these costs.

(Laughter)

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, I rise in support of Mr. Dahood's motion and I also support what Mr. McNeil said about a legislature perhaps having an opportunity under the minority report to pack the court, and I think maybe the best thing for us to do is make a decision right now as to whether or not we ought to have five or seven. And, on page thirty-one of the judicial report -- this blue and white book -- you will find a comparison of courts in other states. I find that

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Alabama has nine on their supreme court; Arkansas has seven; California has seven; Colorado has seven; Connecticut has six; Florida has seven; Georgia, seven; Illinois, seven; Iowa, nine; Kansas, seven; Kentucky, seven. Some thirty states have more than five justices. Some of the states that have only five justices on their court also have a lower court that is known as an appellate court, which is also above the trial court level. So, it appears from comparing Montana to other states, that our court does have fewer members than the majority by far of the courts of other jurisdictions. And, I think we have to be aware of this. Anyone who has read broadly knows that our courts are in trouble, not only here in Montana but throughout the entire nation. You've heard about -- you've seen on television where people have stayed in jail for months and months and months and never gotten into the court house, never gotten a hearing. There are cases where people have sat in jails in cities for two years because they couldn't get bailed out before they could be brought before a court for a hearing. There are cases that have layed around for four or five or six years. And in either case, whether you represent the plaintiff or the defendant in a case, justice delayed is justice denied. And we are writing a Constitution for the future. We are writing a Constitution for the next fifty or a hundred years, hopefully, and I think that we ought to take into consideration that the volume of work of the courts is in-

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creasing and that decisions of the supreme court of Montana ought to be written by judges, not by law clerks, and we ought to, at this time, make a decision and I would hopefully -- I would hope that it would be in favor of increasing the number of the court so it might more adequately represent the people in the future. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I don't know how the other members of this body feel but as far as I'm concerned, unless we have some facts and figures to base our vote on, there is only one way I can vote at the present time, and that's against the amendment.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I think the seventy-six of the Delegates who are not lawyers must feel the same position that I'm in right now. I really think that there is one vital statistic that surely one of you twenty-four lawyers should be able to give us, and that is, how many opinions were rendered by the supreme court last year?

CHAIRMAN GRAYBILL: Mr. Schiltz, can you answer that question?

DELEGATE SCHILTZ: I can't answer that, but I can say that the Style and Drafting Committee met in the back of the supreme court library from about the eighteenth to the ninth of February, and the lights were out in there all that

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three weeks, which isn't to say that the supreme court isn't busy. The supreme court is busy. They just happened to hit a little slack period in there. No, I agree with Mr. Dahood. I think that court should be increased. I think that if we can get the statistics, and I don't think we can get them on Saturday, but if we can get the statistics, they would establish, according to the report the chief justice makes once a year to the Montana bar association, I think they would show that their work load goes up substantially each year. I also agree with Mr. Dahood that even if this would cost a considerable amount of money more, in the interests of justice it's certainly worth it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: I kind of question as to how busy the court is, myself, because all the time I've been here I've noticed them holding court about two days out of it while I've been here, and that's been about five weeks now. Now, I don't know -- there's probably a lot of other procedures that go along with that. I'd like to have one of these lawyers explain some of that to me.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I'd like to explain that but first I want to say that I agree with the seventy-six non-lawyer members. We do need facts, figures and statistics. It's rather deceptive to sit back and determine whether or not

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the court is loaded or underloaded --

(Laughter)

DELEGATE DAHOOD: -- with respect to work, simply because I do not think the non-lawyer members understand precisely how a supreme court functions. Now, they might have, say, one hundred or two hundred cases in the course of a year. That does not tell you exactly how much burden is upon them. One case may have a four hundred page transcript. That represents all of the testimony that has been produced in the lower courts and they will have all the pleadings with it. They will have all the briefs. And if you have two or three hundred appeals during the course of a year, just how much time will those five justices have actually to go over every transcript, go over all the testimony, go over all the briefs, and to do all the work that is required in order to have an informed type of decision. Now, Mr. Holland has placed before me an indication of the appeals that were filed in 1971. Now, appeals filed totaled a hundred and ninety-eight, and I -- and that does not tell us exactly the full content and the full extent of that work because we don't know the type of appeals that they have had. But, I can think of several appeals that we are involved in where the transcripts do exceed four hundred pages. And it takes a great deal of work to go over all that testimony, to conduct hearings, to go over the briefs, to reason it out and to come forward with the type of decision that gives the type

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of quality and certainty that is required to make the law the type of living thing that is required to allow society to progress so lawyers can predict what the supreme court would do in a particular case and in that fashion, quite frankly, reduce the number of appeals. But I would think that probably this matter ought to be passed over until we can have some additional statistics on it and determine just precisely what the attitude of the court might be with respect to whether or not there should be additional help that we can have the best type of appellate process. And I would like to move at this time that this matter be continued until Tuesday and be brought up at the appropriate time when the supporters of this motion and the mover of this motion can present facts and figures to this body.

CHAIRMAN GRAYBILL: Mr. Dahood, are you trying now to postpone your own motion?

DELEGATE DAHOOD: Mr. Chairman, I think in fairness I should move to postpone my own motion. I think that we do have to have facts and figures. Perhaps they will sustain my position, perhaps they will not. I know, as a matter of integrity, they should sustain my motion. I know that our appellate court requires more time to do a better job. I hope that those statistics are going to sustain the belief that I have and that's shared by many of my colleagues before the bar of this state.

CHAIRMAN GRAYBILL: All right, let's make a motion

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to pass consideration until ten-thirty A.M., on Tuesday. Is that all right?

DELEGATE DAHOOD: That is satisfactory. Mr. Chairman, I move at this time that the matter be passed until ten-thirty on Tuesday of next week.

CHAIRMAN GRAYBILL: Mr. Foster, for what purpose do you arise? Do you want to debate that motion to postpone?

DELEGATE FOSTER: Mr. Chairman.

CHAIRMAN GRAYBILL: All right.

DELEGATE FOSTER: Mr. Chairman, I think we have a perfectly good solution before us. The solution is the report of the minority committee. I think they have considered this. I think they have considered the need for the legislature to investigate the whole area, whether we need more justices in the supreme court, and I submit that we're not here to legislate. They have given us the logical conclusion. They have given us the opening for the legislature in the future to provide for additional justices if needed, and I submit that for us to increase the number of supreme court justices --

CHAIRMAN GRAYBILL: Just discuss the issue, not how many we should have.

DELEGATE FOSTER: Well, I feel that the solution is that we should leave it to the legislature as provided by the minority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: So many as shall be in favor of

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Mr. Dahood's motion to pass consideration of section three until ten-thirty, A.M., on Tuesday, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be against, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Vote Aye if you are in favor of passing; vote No if you are in favor of not passing. Have all of the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Sixty-one having voted to pass and nineteen having voted not to pass, the motion is adopted. Now, ladies and gentlemen, I think you should have the philosophy of the Chair. It is that we should finish the judiciary article by Tuesday night. We have now adopted one section and passed two. The Chair does not intend to work you Monday, does not intend to work you tonight, but I do intend to continue for a while, so will you please read section four?

CLERK SMITH: (Reading) Section four, District Court Powers: Original jurisdiction of all matters and causes, both civil and criminal, including the power to issue, hear and determine original and remedial writs is vested in the district

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courts, but distribution of concurrent jurisdiction with other courts may be provided by law. Until otherwise provided by law, appeals from inferior courts must be tried anew in the district court. District courts shall also have jurisdiction to review decisions of administrative boards and commissions and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the state of Montana. The supreme court and district court process shall extend to all parts of the state. (End reading) Mr. Chairman, section four.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that this committee, after having under consideration section four of the minority article, when it does arise and report, adopt the same. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: We are concerned here now with the jurisdiction of our principle trial court, the district court. Now, this particular section has been whittled down by the minority considerably but it's not an innovative or fooling around with the jurisdiction of the district court. To the contrary, it is an effort to reduce it, to make it concise, and make it broad. Now, the district court jurisdiction as it reads today is essentially the same in the first paragraph. It gives to the district court jurisdiction in all cases in law and equity and it uses as we do in all cases. Now, the word, all, is an

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all-inclusive term and the purpose of using that word, all, is to be certain that this principle trial court does have a jurisdiction, an exclusive jurisdiction, of all litigation at the trial level. We have deleted from the existing Constitution the reference to all of the various types of cases that are enumerated there because it doesn't add anything and if anything, it may be limiting. It may be confusing. What the existing Constitution says and what the majority report says is, it has jurisdiction in all cases in law and in equity, including -- and then it goes down and it specifies all of the various types of cases that may be included. But, we are looking to the future now. We don't know, we can't say, no lawyer here can assure you that the various types of cases enumerated within the old Constitution and still contained in the majority report will be adequate for full adjudication of all rights and what a shame and a collosal mistake it would be for a person to have a wrong and no remedy because the remedies have been so categorized and specified, and this particular wrong is not included. This would be a collosal error. To avoid that possibility, we have done just like almost all other states, just like the United States Constitution, we've said it has original jurisdiction in all cases, both civil and criminal. Then we add, so there's no question, about the authority of the district court to issue original and remedial writs. That covers the waterfront. It covers every conceivable known writ

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today. If, in the future, it becomes necessary to recognize -- perhaps through the legislature -- a new writ that will accomplish purposes unknown today, the jurisdiction is there to do it. Now, with respect to the appellate jurisdiction of the district court, we were concerned that there might be some hiatus here so we said that, until otherwise provided by law, appeals from inferior courts must be tried anew in the district court. Now, the language we're employing here is not new at all. It's contained within the statute. It pertains to appeals from the justice court to the district court and it does this -- it permits an appeal from the justice court to the district court without cost of transcript where the case will be tried anew. It is -- this situation can often occur where you try a case in the justice court, you think you're going to win, and then you lose. Now, if you were required to have a transcript, if the justice court was a court of record and you had to prepare a transcript and go on up to the district court, you are involved with immediate, extravagant expense immediately. This provision, which permits a trial de novo, or as the wording is, tried anew, avoids that. The district court is also given the jurisdiction to review decisions of administrative boards and commissions. This is becoming more and more a problem in modern society and will become more complex as time goes on. There ought to be some judicial -- some place for judicial review of actions of boards because, most frequently, the arbi-

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trary -- this in actions of boards of administrative agencies, this is frequently where you get arbitrary and capricious results and it is essential that there be some power of review by the judiciary to avoid the hardship of an arbitrary decision. Finally, we have broadened the jurisdiction insofar as it may be delegated by the United States. Our present Constitution says that district courts shall have jurisdiction for naturalization purposes, as delegated by the laws of the United States. We contemplate that in the future there may be other areas of jurisdiction delegated by Congress. We want the district court to be in a position to handle that kind of a case. Finally, we have provided that district courts and the supreme court, that their processes will extend to all of the state of Montana. In other words, we didn't want any possible construction that a subpoena or a summons issued out of the district court might be limited just to the district that it occupies, but rather, that it extend throughout the entire state. That is not new or novel.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. President, I wonder if Mr. Berg would yield to a series of questions relative to this?

DELEGATE BERG: I yield.

DELEGATE HOLLAND: Specifically, Ben, what I'm worried about is this phrase, district courts shall also have jurisdiction to review decisions of administrative boards and

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commissions. Specifically, what type of review do you have in mind?

DELEGATE BERG: Well, Dave, I think you and I both agree that there are many instances in the present day practice where you appear before boards, where sometimes there is or is not a transcript, where, if there is a transcript, by the time it gets ready to go to the district court, it's been sadly depleted. These are problems that arise in review of administrative actions which I think are going to become more complex as the time goes on. I want judicial review.

DELEGATE HOLLAND: You want judicial review, but on a de novo basis?

DELEGATE BERG: Yes. I would actually prefer it oftentimes on a de novo basis but I haven't limited it that way. If there is an adequate transcript and the legislature so provides, it can go up on a transcript basis.

DELEGATE HOLLAND: It seems to me that if we are going to have a review, and I certainly agree with you that we need review on these things, that we should either specify it's de novo -- that is, the court looks at the question anew -- or else that it's a simple review as they sometimes do, and I would like to -- I'm going to make an amendment, as soon as we get finished, I'm going to make an amendment that it be one or the other so we know specifically what it means.

DELEGATE BERG: Well, I would say in that regard, I

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would rather have the broad jurisdiction so the right of review is unquestioned and unlimited.

DELEGATE HOLLAND: I have one more question --

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Do you know of any other constitution that has a similar provision?

DELEGATE BERG: To be very honest with you, Dave, I cannot find any constitutions that have this exact language but there are many, and I can refer them to you, which do give jurisdiction to review boards and commissions and they generally, they spell it out a little more clearly than I have. I have purposely made it broad and flexible, but I can give you those that do, if you like.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Berg, yield to a question, please?

DELEGATE BERG: I yield.

DELEGATE SCHILTZ: Mr. Berg, is it your intention, by the language that Mr. Holland was just questioning you, that the district court shall also have jurisdiction to review decisions of administrative boards and commissions -- is it your intent with that language to have an automatic review on all district -- on all administrative decisions?

DELEGATE BERG: I may put it this way. Initially, when I drafted this, I added the clause, as provided by law.

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Then I felt that was giving to the -- that was giving to the legislature a power over the jurisdiction of the district court and I basically am opposed to that because I believe that all justiciable, all matters of controversy, whether they be before boards or commissions, ought to be reviewable in courts. I'll put it that way.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE BERG: Therefore, I did not limit it.

DELEGATE SCHILTZ: I just want to be sure, from the standpoint of Style and Drafting, that you don't intend -- and additional jurisdiction as may be delegated by the laws, et cetera -- to qualify that statement.

DELEGATE BERG: I did not because I specifically left out at that point, as provided by law.

DELEGATE SCHILTZ: Now, will the gentleman yield to another question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE SCHILTZ: You don't provide the court of jurisdiction for this appeal and I would assume that most boards sitting in Helena, that we're going to overload the first judicial district. Have you thought of that?

DELEGATE BERG: Well, I consider that district courts have original jurisdiction throughout the state and if it's overloaded in Helena, we'll be happy to have them in Bozeman.

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That is possible. It is altogether -- no question about the jurisdiction of the district court in Bozeman or Great Falls or Helena hearing any one of these matters because they all have original jurisdiction with process that extends throughout the state.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I move an amendment at this time to section four, line eleven, following the word, commissions, and before the word, and, to insert the following language: and the issue will be tried anew in the district court.

CHAIRMAN GRAYBILL: Very well, Mr. Holland has proposed an amendment on line eleven after the word, commission, by adding, and the issue will be tried anew in the district court, the purpose of which is to say for sure that the administrative board or commission hearing will be tried anew in court.

Mr. Holland.

DELEGATE HOLLAND: Did you want me to yield --

CHAIRMAN GRAYBILL: Mr. Berg, do you want the floor?

DELEGATE BERG: I rose for the purpose of a question. Will you yield, Mr. --

DELEGATE HOLLAND: I yield, yes.

DELEGATE BERG: Would you -- would you substitute the word, may, for will, and that then will give you the alterna-

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tive of a trial anew or a trial by transcript with record if it is available?

DELEGATE HOLLAND: Well, I want to decide it one way or the other, whether it's a trial de novo or a trial anew, or else if it's going to be a review one way or the other, and I think we -- the sense of my amendment would be that it will be a new trial in the district court and for that purpose I will not substitute the word, will, because I -- as a matter of fact, I will substitute the word, will, to shall, and change my amendment to read: and the issue shall be tried anew in the district court. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: This language in the minority statement has bothered me right from the start. I have discussed this matter with Mr. Berg, who is the principle author of the minority position, and it seemed to me that this will put the whole judicial article regarding the power of the district court in jeopardy, because I don't think anyone will know exactly what it -- at least, I don't know exactly what it means unless there is some clarifying language. Many of these boards, as Mr. Berg has indicated, many of these boards receive evidence in a haphazard manner. Many do not transcribe records. Many, many times a person goes before these boards without an attorney. The hearings are put on by -- put on without the aid of counsel and many times valuable rights, such as the right to

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a license to practice a profession -- perhaps plumbing, perhaps beauty operator, perhaps many other things, all of which I don't know -- and then when these people are aggrieved, they go to an attorney, there's no transcript, no one was there to protect their record, and then when it comes time to getting the review in the district court you find that you are limited to going back to the record, finding some error in the record and there is no record. There being no record, it is presumed that the record is sufficient. And I feel strongly that many people are deprived of valuable legal rights in this process and -- as with appeals from inferior courts, I presume by that they mean justice courts -- many times when they go to have the matter thrashed out, it's just too late. And, so, I urge this amendment for review of administrative boards and commissions shall be tried anew, the evidence shall be reheard by the district court, and the decision based upon the evidence received at that level if the person feels he is aggrieved. And I feel that very often these administrative boards and commissions are, because of their nature, the people are deprived of their rights without due process.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I would like to make a substitute motion that the entire sentence be deleted. I feel that this is a glaring example of legislative detail. I hope it is realized that we are expecting the district courts

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to try all zoning matters, weed control matters, every other kind of silly thing that comes up under any board, bureau or commission, and the result would be to clog the courts and to create a first class administrative and legal disaster. Now, it seems to me that it is perfectly clear here that the courts have whatever jurisdiction the legislature, the law, puts upon them, provides for them from time to time as the need arises, and let us not try to build the whole thing in the Constitution. Here's where I want to stick to my fundamental detail. Let's not get all this spinach in the Constitution.

CHAIRMAN GRAYBILL: Mr. Garlington has made an amendment that strikes the sentence beginning on line nine on page forty one: District courts shall also have jurisdiction to review decisions of administrative boards and commissions and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the state of Montana.

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise with enthusiasm to support my fellow Delegate from district eighteen on this. I think he's absolutely right. If Mr. Berg believes what he said in his original statement, he would have to support it, too.

CHAIRMAN GRAYBILL: Mr. Berg. You have the floor, Mr. Berg.

DELEGATE BERG: Mr. Heliker must misunderstand and

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must misinterpret what I said. Now, with all due regard to Mr. Garlington, in Bozeman we frequently do try decisions from zoning boards. We have that problem prevalent right now, and I simply want to assure that the district court has the unquestioned power to hear and review those disputes before boards where I feel people often do not get what I would call due process in the course of presenting it. Now, it is true that the legislature frequently does provide for the review of those boards. In the case of zoning, an appeal from the board of appeals is done by a writ of certiorari. That's done by statute. The legislature has extended that authority to the courts. But, my point is this, that all disputed matters of a judicial character ought to be decided in the judicial branch of the government and not exclusively and finally before boards or commissions of the administrative branch, and for that reason, I include it here because I think it's appropriate.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Holland, would you yield?

DELEGATE HOLLAND: I'm glad somebody asked me a question. Yes, I'll yield, Mr. Brown.

DELEGATE BROWN: In making that amendment, would you now take a rate hearing before the public service commission that might go on two or three months, and then appeal that to the district court and have a complete new hearing --

(Garbled. Both gentlemen speaking at once.)

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DELEGATE HOLLAND: You bet, you bet. I think those rates have been raised disgracefully time and time again and I'd like very much to have a full review in the district court, Mr. Brown.

DELEGATE BROWN: I don't want you to --

DELEGATE HOLLAND: I don't even think that rate commission should be deciding the matter. I go beyond --

CHAIRMAN GRAYBILL: Mr. Brown, your question is out of order. It's not on the amendment, the substitute motion of Mr. Garlington to delete the sentence.

Mr. Wilson.

DELEGATE WILSON: Mr. President, I hesitate to get up here and get embroiled amongst the lawyers but I'm a little bit apprehensive, having served on administrative boards and commissions, to just what this would entail. I see lots of problems developing with the clogging of the court system on this type of issue and I would like to ask Mr. Schiltz if he would yield to a question, or explain this for me.

DELEGATE SCHILTZ: I yield.

DELEGATE WILSON: Would you explain what would be involved here, Mr. Schiltz?

DELEGATE SCHILTZ: Well, on the motion of Mr. Garlington, the entire sentence starting with, district courts shall also have, would be deleted so there would be no problem such as you speak of.

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DELEGATE WILSON: Mr. President, I support Mr. Garlington's motion.

CHAIRMAN GRAYBILL: Mr. Wilson, the court feels constrained to point out that the first paragraph of section four still gives the legislature the power to make any administrative matter remedied in the courts.

Mr. Cate.

DELEGATE CATE: (No response)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Garlington's substitute motion to delete the sentence that says: District courts shall also have jurisdiction to review decisions of administrative boards and commissions and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the state of Montana. As many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Please vote on the voting machines. So many as are in favor, vote Aye. So many as are opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

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his vote?

(No response)

CHAIRMAN GRAYBILL: Forty-two Delegates having voted Aye, thirty-two Delegates having voted No, the motion to delete the sentence carries. Very well, the issue is on section four, as amended. Is there further discussion?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I think the action that we just took was kind of rash because we knocked out naturalization in district courts as well as, perhaps, the question as to whether or not courts can even review administrative --

CHAIRMAN GRAYBILL: Mr. Cate, I can't hear you. That's better. Try again.

DELEGATE CATE: And I think that at a later time we ought to move to reconsider. But, at this time, I would like to discuss another sleeper in here, and that's on page forty-one, line eight, the first five words: until otherwise provided by law. One of the things that I didn't like about the Montana Plan was that the decisions of the courts below the district court were not entitled to trial de novo in district court. You would have had to appeal those decisions to the supreme court of Montana in order to get a reversal of them and under the present system -- let's take the police court, and by that I mean the police's court. In the police court, if you get a ticket, if you get a ticket and you go to court,

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1 and you're found guilty by the police judge, you have the right
2 today to appeal to the district court which covers that par-
3 ticular police court. You don't have to go to the supreme
4 court of Montana in order to get a new trial. Now, these five
5 words would permit the legislature to change that system so
6 that if you got a ticket in police court and you didn't think
7 it was right, you would have to go all the way to the Montana
8 supreme court with an appeal in order to get a new trial. Now,
9 I think that's a pretty dangerous thing to play around with.
10 I think that -- I don't mean to be a stuck-in-the-mud, and I'm
11 not a stuck-in-the-mud -- I don't think there are many people
12 who would classify me as conservative -- but I'm a little bit
13 afraid of this because what it could mean is these police courts,
14 for instance, could have this type of power that you -- and I
15 think police courts are notoriously unjust -- and not because
16 I lose most of the time in there -- but the system is built
17 against the citizen in those courts and usually the word of the
18 policeman is taken over the individual without question, and
19 I think anybody that's had experience in police court would
20 agree with that. And I hate to see that right of appeal to
21 the district court, or trial de novo in the district court,
22 taken away. And, although this doesn't do it, it provides the
23 method by which it might be done and I think we ought to pre-
24 serve that fundamental right. And, so, I would move to strike
25 from section four, line eight on page forty-one, the five words,

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until otherwise provided by law. Thank you.

CHAIRMAN GRAYBILL: Very well, Mr. Cate, your motion to strike the words, until otherwise provided by law, is accepted.

Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I rise in support of Mr. Cate and also my brother, Garlington, as we lawyers refer to ourselves. This morning when I gave my great speech about the fact that we had something that worked pretty well for seventy-two years and we had no complaints about it, why fool around with it, why, evidently Brother Garlington and Brother Cate paid very little attention. They are beginning to take a pretty hard look at the minority definition of courts and beginning to realize that they may well have run into something that might cause some future trouble, and I can see that it's going to cause a lot of trouble. But, that's neither here nor there. I think Mr. Cate is absolutely right, that we have to be very careful that this language is preserved and the rights of appeal in the police court are preserved, and I rise in support of him and urge you to vote to make sure that this is continued.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: We have just now eliminated naturalization powers from the district court, which have been there since 1889, courtesy of the surgery that is going on here.

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Now, this language, until otherwise provided by law, was put in there for a very specific reason. It gives flexibility to this judicial system. Now, if you want to lock it in and make it forever impossible to do anything about the appellate procedure from the lower courts to the district court, go right ahead and do it, but let me tell you this -- this language was put in there so that if in the future it becomes desirable, for instance, to use the magistrate system, somewhat similar to what was used in the Montana Plan, not advocated now by the minority, but if in the future the legislature wants to make this a two-tier system as it is employed in many other states, this kind of language opens it up. But if you take it out, the only way you're ever going to do that is by amendment. Now, take your choice. Do you want a flexible system, or do you want it locked up so it can't be changed? You're getting down into some rather vital places.

DELEGATE AASHEIM: Mr. President, could a simple citizen ask a question?

(Laughter)

CHAIRMAN GRAYBILL: Mr. Berg -- you don't have the floor yet, Mr. Aasheim. Mr. Berg, would you yield to a question from the Chair?

DELEGATE BERG: I yield.

CHAIRMAN GRAYBILL: The Chair is concerned about your statement that we have eliminated naturalization because, as

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a lawyer, I don't understand that. Do you mean to say that unless we write in here that we have -- I understand we have eliminated the language you had in to cover it, but do you mean to say that if we don't write language into this Constitution that we can't accept jurisdiction from the United States Congress in the district courts?

DELEGATE BERG: Well, I call your attention to section eleven of the old Constitution and -- see if I can read it, I've written over it so many times. I've written it out so many times I can't read my writing, but -- let me see yours. It says now in the old Constitution, and said court shall have the power of naturalization and to issue papers therefor in all cases where they are authorized so to do by the laws of the United States. I felt that if the Constitution felt that such language had to be there to enable acceptance of the jurisdiction, it ought to be retained. And I take it now that since -- and I tried to broaden that to cover any other kind of jurisdiction that Congress might want to delegate in that last sentence. I didn't limit it just to naturalization.

CHAIRMAN GRAYBILL: But -- would you yield to another question?

DELEGATE BERG: Yes, sir.

CHAIRMAN GRAYBILL: Is it your interpretation that unless we give them that power, after you've given them that power in the first part of that section, that they simply could

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not accept jurisdiction from the United States Congress?

DELEGATE BERG: Well, I feel that since the old Constitution starts out with the same broad language, I didn't want to be too surgical here because I felt that if it was necessary in the old Constitution to do that, there must be a good reason. Not knowing reasons otherwise, I left it in.

CHAIRMAN GRAYBILL: Is it your interpretation that Mr. Cate's proposal, for example, would make it impossible to handle naturalization in the district courts?

DELEGATE BERG: It was Mr. Garlington's motion that was so destructive.

(Laughter)

CHAIRMAN GRAYBILL: Very well. Mr. Aasheim had something.

DELEGATE AASHEIM: Mr. President, I'm going to wait until the legal fraternity gets their arguments settled and then I'm going to ask mine.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman. Mr. Berg, I would disagree with you that by taking out this section we would lock in this system forever. As I read it, you could still create as many courts inferior to the district court as you might want to, but the principle that you would have the right to trial de novo in district court from those lower courts would still be there. Now, if we are going to establish someday the magis-

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trate plan, where the magistrate does not have to be a lawyer, which is like the JP system today and the police court system today, I think that we ought to protect that right to trial de novo in district court before a man who is a lawyer, who knows what the law is, and that's a district judge. And, so, I would disagree with you that we are locking this system in by taking those words out. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I am not sure that this little legal debate is getting across to the lay people in this group, and I would like to say very briefly that what Mr. Cate is proposing is that you, as citizens, have an automatic appeal from a police court or a justice of the peace court to the district court. If you are aggrieved there, you have a right to an appeal. Now, the way it is written, you only have that right -- the way it has been written in the minority report, you only have that right to appeal until otherwise provided by law, which amounts to an invitation to the legislature to take away that automatic right. I really think you ought to know that.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Cate's motion to strike from line eight in section four the language, until otherwise provided by law. So many as shall be in favor of that motion say Aye.

DELEGATES: Aye.

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CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and so adopted. Very well, the issue is on section four as amended. Is there further discussion?

Mr. Arness.

DELEGATE ARNESS: Is a motion to amend in order?

CHAIRMAN GRAYBILL: Certainly.

DELEGATE ARNESS: I move to amend section four, beginning at line five, by deleting the word, but, and continuing deleting the words through line six, through line seven, ending with the word, law. And, further, to delete at line fourteen of section four the words, and district court, appearing after the word, court at line fifteen, so that the last sentence now in that paragraph would read: The supreme court process shall extend to all parts of the state. And, above, the sentence reading: but distribution of concurrent jurisdiction with other courts may be provided by law, is deleted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arness, are these two amendments related?

DELEGATE ARNESS: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Arness has an amendment which takes out the last clause of the first paragraph of section four--but distribution of concurrent jurisdic-

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tion with other courts may be provided by law. And it takes out the words, and district court, in line fourteen. It's allowed. Go ahead.

DELEGATE ARNESS: I presume that the other courts that are referred to by section four are the justice courts. At the present time, these are township courts and have a very limited jurisdiction. It's also very easy to come into these courts. As this section is now written, it would be very possible for a litigant to harass someone from way across the state with a fifty or sixty dollar suit in justice court by having the summons issued out of justice court in Libby, for example, to be served in Ekalaka. I'm sure that that can't be intended by the authors of this proposal, but it appears to me that that is presently the effect. By deleting these provisions, the results could no longer be obtained. I'm sure that, at least in the Constitution we don't want to authorize the justice courts to have jurisdiction all the way across the state, and that's the purpose of this amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Would Mr. Arness yield for a question?

DELEGATE ARNESS: Yes.

DELEGATE HOLLAND: It would seem to me that if your amendment was granted that the exclusive jurisdiction of all

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trials would be in the -- restricted to the district court and no other court--justice court, magistrate court or police court would have any jurisdiction at all, and of course, I'm -- one other question, I don't know what the minority court means by process, but if process in your definition means subpoena, you are limiting the power of the district court to subpoena only within their own district, if you consider that process?

DELEGATE ARNESS: That would be the effect of the amendment. That's right. That's what this would do. Otherwise, the way it's written, the justice court would have jurisdiction throughout the state and I think that, although the amendment may restrict the district courts, it would be worse to have the justice courts in their present condition have powers that would ordinarily be ascribed to the supreme court.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Arness, yield to a question?

CHAIRMAN GRAYBILL: Mr. Arness?

DELEGATE ARNESS: Yes, sir.

DELEGATE SCHILTZ: As I understand it, Mr. Arness, you are deleting, and district court, from line fourteen and it seems to me -- and correct me if I'm wrong -- I don't know what its connection is with your other deletion, but it seems to me that a summons would not -- you'd take away the effect of a district court summons anywhere but in its own county, I

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assume.

DELEGATE ARNESS: Yes, that's the way I've amended it. It would seem to me, otherwise, that a justice court would have -- would have jurisdiction that would be co-equal with the boundaries of the state. Now, maybe there's some other way to approach this but it seems to me that it would be more important that we prevent the justice courts from having such a high -- or such powerful jurisdiction, rather than we limit the district courts. Possibly this should be corrected in some other way, I don't know -- I don't see exactly how that should be done.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Cate -- or, Mr. Schiltz.

DELEGATE SCHILTZ: I move that we pass any further consideration of section four until two o'clock on Tuesday. This -- Mr. Chairman, this is much too complicated a problem. I just can't conceive that Mr. Arness is serious that he wants to take away the service of process for the district courts beyond the limits of the county. And, I think we're all just a little too rummy to find out what he's talking about.

CHAIRMAN GRAYBILL: The motion to pass consideration until Tuesday at, what? Eleven?

DELEGATE SCHILTZ: Two o'clock.

CHAIRMAN GRAYBILL: Oh, at two? Well, let's make it one. At one -- is that all right, Mr. -- will you accept that?

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One?

DELEGATE SCHILTZ: I thought we had --

CHAIRMAN GRAYBILL: No, we've got nine, ten-thirty and now one.

(Laughter)

CHAIRMAN GRAYBILL: All in -- Mr. Harper, do you want to argue?

DELEGATE HARPER: No. This may not be germane here. But, would somebody raise a flag when you get onto anything that has to do with small claims court?

(Laughter)

DELEGATE HARPER: Well, that's where --

CHAIRMAN GRAYBILL: Mr. Harper, we're there now.

DELEGATE HARPER: I'm wholeheartedly in favor of passing this thing over because I've got to get with somebody and find out if a citizen can get his licks in here.

(Laughter)

CHAIRMAN GRAYBILL: Mr. McNeil, would you like to debate the motion?

DELEGATE McNEIL: Mr. Chairman, for both Mr. Arness and Mr. Harper, your concerns are premature as, by voice vote on section one, we've abolished justice courts.

CHAIRMAN GRAYBILL: All right, well, I think that was not particularly germane so I take it we are ready to vote on Mr. Schiltz's motion to pass consideration of section four.

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All those in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Now, the Chair would like to observe that this is, of course, a complicated area and you must either choose to become educated or you must choose to follow one of the two leads, the majority or the minority report, and I think we have now demonstrated, by passing the first three major sections that we tried to debate, that we could be here all next week or the next two weeks. So, either make up your mind to become educated or find some bellwether to follow and we'll try to get through this on Tuesday rather rapidly. Now, the Chair is about to entertain a motion to recess, but if there is other business, please bring it up. Mrs. Bugbee, for what purpose do you rise?

DELEGATE BUGBEE: Mr. Chairman, would it be possible for someone -- one of the lawyers -- to be assigned to interpret what the other lawyers have been saying after they've said it?

(Laughter)

CHAIRMAN GRAYBILL: Mrs. Bugbee, the Chair will rule that that would be an impossible task.

(Laughter)

CHAIRMAN GRAYBILL: Mr. Cate.

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DELEGATE CATE: Mr. Chairman, I don't want you people to forget the People's Plan, because I think that --

CHAIRMAN GRAYBILL: Mr. Cate, you are out of order now. I'm not going to take any more. If you have any purpose -- we'll get to the People's Plan. All right, Mr. Eskildsen, will you explain the way we are going to do this.

DELEGATE ESKILDSEN: (Inaudible. Speaking to the Chair on telephone.)

(Laughter)

CHAIRMAN GRAYBILL: We've just changed the way we are going to do this.

(Laughter)

CHAIRMAN GRAYBILL: Mr. Eskildsen, would you proceed?

DELEGATE ESKILDSEN: Mr. Chairman, I move that the Committee of the Whole rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: The motion is to rise and report progress. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: So ordered. Mr. Kelleher. Mr. Kelleher.

DELEGATE KELLEHER: (No audible response. Microphone not turned on.)

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(Convention in session. President Graybill presiding.)

PRESIDENT GRAYBILL: The Clerk will read the title of the committee report.

CLERK SMITH: (Reading) February twenty-sixth, 1972. Mr. President, we, your Committee of the Whole, having had under consideration Report Number Four of the Committee on Judiciary, recommend as follows: On motion of Delegate Graybill, duly carried, the committee postponed considering Style and Drafting report on General Government. On Holland's motion, duly carried, Rule Fifty-One was suspended so that the majority and the minority report could be presented and a vote then taken on which one committee wishes to consider section by section. At 11:55 A.M., committee stood in recess until 1:15 P.M. --

PRESIDENT GRAYBILL: Mr. Clerk, is that the title of the report?

CLERK SMITH: No.

PRESIDENT GRAYBILL: Very well. Mr. Eskildsen, will you make a motion. Unless there's objection, we won't read the entire report.

DELEGATE ESKILDSEN: Mr. Clerk, would you read the rise and report part?

PRESIDENT GRAYBILL: Just read the title.

CLERK SMITH: That the committee rise and report pro-

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gress and beg leave to sit again. Signed, Graybill.

DELEGATE ESKILDSEN: Mr. President, I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

PRESIDENT GRAYBILL: Is there some trouble, Mr. Monroe?

DELEGATE MONROE: No.

PRESIDENT GRAYBILL: Would you please get your seat, then? Order of Business Number Eleven, Announcements. The Chair wishes to announce, so that you may tell your wives if they are here, that the Wednesday luncheon for women has been postponed until Thursday. They may need to know that to make plans. The Chair also wishes to announce that the Chair has checked with Justice -- Mr. Justice Castles. The Court heard two hundred forty matters last year. You may want to write this down. They issued a hundred and sixty opinions. This was an increase of one-third over the volume of business the year before. Are there other announcements?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would like to announce a meeting of the Committee on Style and Drafting at

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eight o'clock on Tuesday. We've been losing about half our time because so many people arrive late that we can't achieve a quorum. I urge you to get there on time.

PRESIDENT GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman -- Mr. President, in case some of you might have had this invitation lost in the shuffle of papers, I would like to read: If you aren't afraid of a Madison Avenue image, we would like very much to have you and your wife or husband come to our home at 720 Madison at 6:30 on March first, for a cocktail supper. The house was built by Governor Hauser in the territorial days and we bought it from Carroll College about a year and a half ago to revise, alter or amend. Please let me know if you can come. We would be delighted to have all of you.

PRESIDENT GRAYBILL: Other announcements?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. Pursuant to the general powers vested in the Montana Constitutional Convention, and in accordance with the provisions of Section 7-(6) of the Enabling Act (Chapter 296, Laws of 1971), the Montana Constitutional Convention shall recess temporarily until 9:00 o'clock A.M. on Tuesday, February 29, 1972.

PRESIDENT GRAYBILL: The motion is to recess until nine A.M. on Tuesday morning. All in favor, please say Aye.

DELEGATES: Aye.

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PRESIDENT GRAYBILL: Opposed, Nay.

DELEGATES: (No audible response)

PRESIDENT GRAYBILL: We stand in recess.

(Convention in recess at 5:42 o'clock, P.M.)

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MONTANA CONSTITUTIONAL CONVENTION

February 29, 1972 34th Convention Day Convention Hall

9:07 o'clock A.M. Helena, Montana

PRESIDENT GRAYBILL: The Convention will come to order. The Convention will come to order. If you'll all rise, we'll have the Pledge of Allegiance by Mr. Blaylock.

(DELEGATES GIVE PLEDGE WITH DELEGATE BLAYLOCK LEADING.) I pledge allegiance to the Flag of the United State of America, and to the republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

PRESIDENT GRAYBILL: Delegate Burkhardt will lead us in an Invocation.

DELEGATE BURKHARDT: Let us Pray. At this particular time, O, God, we're grateful that Jesus had both a sense of humor and good judgment. He looked the lawyers of his time in the eye and said, you strain at the gnat and swallow the camel. Somehow, may we have good humor and good judgment for the work of this day, Amen.

PRESIDENT GRAYBILL: We'll take roll this morning by voting Aye on the voting machines. Please vote Aye on the voting machines.

CLERK HANSON: Delegate Anderson, Oscar O., Delegate Barnard, Delegate Berg, Delegate Blaylock, Delegate Blend,

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Delegate Brown, Delegate Bugbee, Delegate Etchart, Delegate Felt, Delegate Harrington, Delegate Nutting, Delegate Etchart, Delegate Felt, Delegate Nutting.

PRESIDENT GRAYBILL: Would you repeat the absentees?

CLERK HANSON: Delegate Etchart, Delegate Felt, Delegate Nutting, Delegate Harrington.

PRESIDENT GRAYBILL: Very well, take the vote.

Aasheim	-	Present	Brown	-	Present
Anderson, J.	-	Present	Bugbee	-	Present
Anderson, O.	-	Present	Burkhardt	-	Present
Arbanas	-	Present	Cain	-	Present
Arness	-	Present	Campbell	-	Present
Aronow	-	Present	Cate	-	Present
Artz	-	Present	Champoux	-	Present
Ask	-	Present	Choate	-	Present
Babcock	-	Present	Conover	-	Present
Barnard	-	Present	Cross	-	Present
Bates	-	Present	Dahood	-	Present
Belcher	-	Present	Davis	-	Present
Berg	-	Present	Delaney	-	Present
Berthelson	-	Present	Driscoll	-	Present
Blaylock	-	Present	Drum	-	Present
Blend	-	Present	Eck	-	Present
Bowman	-	Present	Erdmann	-	Present
Brazier	-	Present	Eskildsen	-	Present

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1	Etchart	-	Present	Mahoney	-	Present
2	Felt	-	Absent	Mansfield	-	Present
3	Foster	-	Present	Martin	-	Present
4	Furlong	-	Present	McCarvel	-	Present
5	Garlington	-	Present	McDonough	-	Present
6	Graybill	-	Present	McKeon	-	Present
7	Gysler	-	Present	McNeil	-	Present
8	Habedank	-	Present	Melvin	-	Present
9	Hanson, R. S.	-	Present	Monroe	-	Present
10	Hanson, R.	-	Present	Murray	-	Present
11	Harbaugh	-	Present	Noble	-	Present
12	Harlow	-	Present	Nutting	-	Present
13	Harper	-	Present	Payne	-	Present
14	Harrington	-	Present	Pemberton	-	Present
15	Heliker	-	Present	Rebal	-	Present
16	Holland	-	Present	Reichert	-	Present
17	Jacobsen	-	Present	Robinson	-	Present
18	James	-	Present	Roeder	-	Present
19	Johnson	-	Present	Rollins	-	Present
20	Joyce	-	Present	Romney	-	Present
21	Kamhoot	-	Present	Rygg	-	Present
22	Kelleher	-	Present	Scanlin	-	Present
23	Leuthold	-	Present	Schiltz	-	Present
24	Loendorf	-	Present	Siderius	-	Present
25	Lorello	-	Present	Simon	-	Present

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Skari	-	Present	Van Buskirk	-	Present
Sparks	-	Present	Vermillion	-	Present
Speer	-	Present	Wagner	-	Present
Studer	-	Present	Ward	-	Present
Sullivan	-	Present	Warden	-	Present
Swanberg	-	Present	Wilson	-	Present
Toole	-	Present	Woodmansey	-	Present

CLERK HANSON: Mr. President, ninety-six Delegates present, four absent.

PRESIDENT GRAYBILL: Very well. The roll will so show. Order of Business Number One, Reports of Standing Committees?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number Two, Reports of Select Committees?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number Three, Communications? This morning, under communications, the Chair wishes to take the opportunity to address a few remarks to you. I think they have been passed out to you, but I will go over them. In the last few weeks, I have had to do battle on various occasions to accomplish the administrative needs of the convention. And I speak today at the risk of having to do battle again. But I perceive it to be my duty to speak out if this convention is in any danger of failing in its objectives.

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In my judgment, there is such a danger today. As delegates, we have two vital duties about which I wish to speak briefly this morning. We must assume these duties firmly, even boldly, or we will fail. First of all, we must draw up a constitution which changes our system of government for the better. The need for governmental change is, I believe, evident. The present constitution, eighty-two years old, hampers and confines us in a day much different from the late nineteenth century frontier days when it was adopted. We need not change all of it, but surely it is evident that we need not reenact it either. The voters have authorized this convention and the taxpayers are funding it. They expect us to accomplish important changes. In my judgment, our efforts must be innovative. We must make the system work better. The new constitution must be an advance. It must be simpler, shorter, and designed to work in the future. This much our presence here attests to. Not change for change sake, but change for a new and better way to improve and safeguard Montana's future. But we are delegates, not representatives. In my judgment, we are sent here to use our abilities and to reason out a new document. It is our solemn duty to do as we think best -- to use our heads, to study, to hold hearings, to debate, to compromise and to write a new constitution. Yet, I constantly hear here in the chamber, that the people back home won't accept this or that; that someone back home objects; that we

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have had to call the county clerk; or that the newspapers have discovered the truth from the people. The plain fact is that we should write the constitution, and it should be the best one that we can arrive at together. The people expect leadership from this body. We are the ones they have sent here to study, to hear, to consider, to draft, to debate and to reason out the constitution. When we have done our best, and explained it to the voters, they will support us if we have done our work well. But, we must assume our responsibility. We must write the constitution based on our knowledge, our reasoning together and our work. It seems to me obvious, that the people we continually depend on and lean on in debate, have not thought through all of these problems, nor heard the witnesses, nor seen the documents, nor studied the blue books. It seems to me a poor excuse for us to blame our votes on the people after we have studied the situation. We must draw up a constitution, then, which changes our system for the better. Now second, we must make this convention work. We must accomplish our purpose here, within our means. It is no answer to insist on the unlimited right to discuss issues. We have that right, but we do not have the time or the money. Perhaps, we should have, but the legislature did not so provide. And, I believe, that they were not wrong. I think we can accomplish our purpose within their limitations, but we must work very hard to do it. In candor, we sometimes

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act like a group of politicians preparing for an election, not like leaders drawing a blueprint for Montana's future. We must tend strictly to the business at hand, the business of compromising on a better constitution. Only when that is accomplished, and when the new constitution has been clearly and fully explained to the voters, should any of us become politicians again. To finish our jobs here successfully -- to make the convention work -- we must depend on our committee system. Each of you have been on a committee. Each of you have worked hard on that committee. No committee here has failed to work hard. We should support either the majority or the minority position. We should realize that the committee members have thought and struggled with the problems in their area, as we have in our areas. Let's follow them. We are not free, each of us, to write the constitution as we, individually, might like. It would be impossible to have a constitution which one hundred of us, individually, liked. We must compromise. We must advance through the articles by choosing the committee alternatives, not by inventing new amendments in the heat of the debate. There will, of course, be exceptions. We must hope that they will be few, or we cannot complete our task in a timely and reasonable fashion. In summary, we must draft the constitution for Montana's future, not for the election. The people will support us when we have shown intelligent leadership. We must make the convention work.

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We must proceed faster and surer, and we must share the responsibility and compromise gracefully. (Applause) Now, to help implement this, you will find attached to these little remarks, some guidelines for debate which I'd like to go over with you. These are my suggestions only, and I want them taken in that spirit. Now, the convention has available only twenty-three days for debate in the nine week session, which, as most of you are aware, is all that the appropriated funds will properly finance, if we're to have any left to explain the constitution to the people. We have used eight days of debate and we have only fifteen days of debate left. Yet, we must still debate eight articles, and cover all the Style and Drafting reports thereon, in these fifteen remaining days. This will be difficult, but not impossible, if the delegates do this. One, debate only the major basic issues. Two, depend on the committees. Follow the majority or the minority. Do not become amateur draftsman in areas you have not studied. Three, discipline your own debate. Arise only with significant, additional comments. Use your vote to record your opinion. The truth of the matter is that about ninety-six of us at all times discipline our debate beautifully. But, the last four get us started again, and then we all go off the deep end. Four, compromise. Understand that there are many ways to do most things. The constitution must be better; it need not be perfect. Five, listen and decide. This, rather than drafting

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changes, is your duty, in my judgment, unless your committee is presenting its article. Six, avoid long speeches and statements for the record and the folks back home. Seven, speak only once, unless you are presenting and explaining your article. Once again, these are not rules. In Committee of the Whole, you may speak as often as you want, and there's no limit yet. But, if we can't live within these guidelines, then we are going to have to have rules, and by the time we get to them, they are going to have to be stringent. Now, on the last page of the four pages put out, is a schedule. This schedule -- there's no magic to it, any of you could have done it. But, if you take the days between now and the eighteenth of March, and divide them up, you will find that no committee gets more than two days, and that the judiciary article must be completed today, and that the General Government remaining article must be completed in a day, or we just can't get done. Now, it's all right there, and in addition to the things in the righthand column under debate, we must consider ten reports on style, plus one on ballot, which I didn't even put on here yet. So, I think you can appreciate the problem. Now, I'll add one more thought and that is that yesterday a good many of the members of the Judiciary Committee and some lawyers did work quite hard. They are going to try and boil down and get themselves together, and try and get the delegates to support either one or the other group of lawyers' viewpoints,

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and try and get the judicial article accomplished today. Now, it can be accomplished today, if we will follow one of the two or three main streams of argument that these lawyers have. If we insist, individually, on becoming lawyers today, it's going to be difficult to educate us all to that level, if I may re-but, in that short time. I thank you very much for your tol-erance in letting me say these things. On the other hand, I think it's absolutely essential that we all understand these things, and that we proceed on this basis. Four, Introduction and Reference of Delegate Proposals?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Five, Final Consideration?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Six, Adoption of Proposed Con-stitution?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Seven, Motions and Resolutions?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Eight, Unfinished Business?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Nine, Special Orders of the Day?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Ten, General Orders.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move the

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Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: You've heard the motion that we resolve ourselves -- Mr. Harrington, do you want to be present? Very well, Mr. Harrington is present. Mr. Etchart, your presence can be noted. Mr. Felt and Mr. Nutting are not here. The motion is to resolve ourselves into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CLERK HANSON: February 29, 1972. The following committee proposals are now on General Orders: Judiciary, Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting One and Two. That the Education article Proposal Number Ten, Local Government Proposal Number Eleven, General Government Proposal Number Twelve, Style and Drafting Proposal Number Two, having been duplicated and placed on the delegates' desks on the 24th day of February, 1972 at 9:00 o'clock A.M., are now in compliance with Rule Twenty-three of the Montana Constitutional Convention rules. Mr. President.

CHAIRMAN GRAYBILL: Very well. We're on the judicial

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article and it's my understanding -- so that everyone will know where we are -- We adopted section one. Section one may be amended if anyone wants to, but it should be done at the end when we take up reconsiderations. We passed section two until this time. We passed section three and section four. It's my understanding, then, that we will start on section two anew and, I believe, Mr. Schiltz you have that.

Mr. Schiltz.

DELEGATE SCHILTZ: I think it is being distributed at the moment. We have developed one small addition that some of the lawyers interested have agreed upon but have not agreed upon the language. With your permission, I would prefer that we go to three until we can resolve this problem of language. There's no problem with three or four, so far as I know.

CHAIRMAN GRAYBILL: Very well. Mr. Berg, will you start on section -- would you like it reread?

Mr. Berg.

DELEGATE BERG: Mr. President. I move that when this committee has considered section three of the minority proposal, with an amendment which I shall suggest, that it do pass the same. Addressing myself to the proposed amendment, may I say that in the weekend recess, as Mr. Schiltz suggested, we did have a conference of several lawyers -- some on the majority, some on the minority -- in an effort to resolve our

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differences, and, I believe, we have done that in a satisfactory manner. It will be in that manner that it is presented to you today. With regard to section three, in line twenty-four on page forty, I move to delete the word, signed, and to substitute therefor the words, joined in.

CHAIRMAN GRAYBILL: Very well. Mr. Berg's amendment is to section three of the minority report on page forty, on line twenty-four, to strike the word, signed, and put in the words, joined in, so that the sentence reads -- the last clause reads: which must be in writing and joined in by the majority.

Mr. Berg.

DELEGATE BERG: In this respect, I yield the floor to Mr. Schiltz to discuss this particular change.

CHAIRMAN GRAYBILL: All right.

Mr. Berg.

DELEGATE BERG: The substance of this change was this -- That this particular sentence was designed to prevent the court from issuing what are known as per curiam decisions, but there are many instances where the court, in expediency, does issue decisions that are not always signed by the justices, but they are always joined in by a majority of the justices before it is promulgated. As a matter of simply permitting court expediency, we changed the language to the words, joined in, rather than, signed. Furthermore, we discovered that every justice, on every opinion, whether it actually indicates

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his signature on the publication, in the minutes of the court, they are signed and they do register, whether they are on majority or minority, whether they are dissenting or writing the majority. This is the reason for this amendment.

CHAIRMAN GRAYBILL: Very well. Is there discussion of section three, as amended. Is there a discussion of Mr. Berg's amendment, joined in.

DELEGATE BLAYLOCK: Mr. President.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Will Mr. Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Yes.

DELEGATE BLAYLOCK: Mr. Berg, why would it make any difference -- and I'm speaking as the layman -- if all the justices signed it? Why is that so hard?

DELEGATE BERG: It is not a difficult thing except that they say -- and we talked with members of the supreme court about this. There are occasions when a justice is on vacation. He has approved of the opinion. He is perhaps away for twenty or thirty days. If you require him to sign it at the time it comes out and is ready for publication, it's held up for at least a period of twenty to thirty days. These are the reasons that were given to us by the court members.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Will Mr. Berg yield to another question?

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CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Yes.

DELEGATE ECK: This is touching rather close to something I think we've been concerned with right through. You did indicate that somehow, they would be on record, either favoring or opposing the particular judgment and that --

DELEGATE BERG: We are assured from the judges, that they sign the minutes of the court, and that indicates their position, whether it's on a per curiam decision or not. They do sign that, and there is a public record available to determine how they voted, and how they considered any measure. They also assure us that on these per curiam decisions, there's seldom a dissent.

DELEGATE ECK: Thank you.

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President, may I talk to Mr. Berg?

CHAIRMAN GRAYBILL: Mr. Berg, will you yield?

DELEGATE BERG: Yes.

DELEGATE PEMBERTON: Thank you. Mr. Berg, is this for just your change or is this -- is all of section three the same as it is in the book, or are we discussing just your change in the word right now?

DELEGATE BERG: I made a motion in moving the passage of section three. I moved it, as amended, by striking the

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word, signed, and substituting the words, joined in. I suppose -- and the Chair may correct me -- you are actually considering the amendment at this time. Thereafter, I would understand you would consider the section as a whole.

CHAIRMAN GRAYBILL: That's right, Mrs. Pemberton, just the words, joined in.

DELEGATE PEMBERTON: Thank you.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, may I ask a question of Delegate Berg?

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I yield.

DELEGATE ROMNEY: Mr. Berg, would you please describe how accessible this decision is to the public? Is it open and available, and how is it available?

DELEGATE BERG: Well, of course, all decisions of the supreme court are published. They are printed and published and, of course as you know, put into a bound book. There are occasions when the court, instead of issuing a majority-minority opinion, especially on what they call the cell block appeals -- If you've seen the list of the workload of the court, you'll find there are so many appeals and then so many cell block appeals. Many of those cell block appeals are per curiam decisions. They are usually about a page long. They are almost always a unanimous decision, but they are

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sometimes issued without any particular justice actually signing it. However, as I understand it, on their journal, on their minutes, it is indicated which of the justices approved that particular opinion.

DELEGATE ROMNEY: Mr. Chairman, another question.

CHAIRMAN GRAYBILL: Yes, but it should be germane to the subject of the amendment.

DELEGATE ROMNEY. I think it is.

CHAIRMAN GRAYBILL: Okay.

DELEGATE ROMNEY: These opinions are available in the office of the clerk of the supreme court?

DELEGATE BERG: Oh, yes. I might tell you that when a court decision is handed down, it is first in a sort of a mimeographed copy, and almost always it's signed. There are, as I say, these rare exceptions -- not so rare, but infrequently used -- per curiam decisions. Those opinions, as soon as they are handed down, are in the clerk's office, and the attorneys of record are immediately -- they are immediately forwarded to them. They are then published, not only in what we call the Montana Report, they are published in what we call the State Reporter. That's a mimeographed sheet that comes out within a matter of a week. You can subscribe to that. Finally, they are printed in the Pacific Reporter all over the western states.

CHAIRMAN GRAYBILL: Very well. All in favor of the

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motion to amend line twenty-four of section three, page forty, by striking the word, signed, and putting in the words, joined in, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So ordered. Mr. Berg, section three. We're now open for other amendments on section three. Mr. Berg, would you move --

DELEGATE BERG: Mr. Chairman. I move that this committee, when it does arise and report, having had under consideration section three on page forty of the minority report, as amended, recommend that it do pass.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Whatever happened to that amendment on section three increasing the number of judges from four to six?

CHAIRMAN GRAYBILL: All amendments are wiped out when we passed it, and we're discussing it as is here.

DELEGATE ROMNEY: Very well.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: We have discussed only -- have read only -- the first paragraph of section three. Have we divided that into subsections?

CHAIRMAN GRAYBILL: No, we have not.

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DELEGATE HARLOW: The motion was to take all of section three.

CHAIRMAN GRAYBILL: That's right. I'll be glad to read it for you or have it read. Will the clerk please read section three in its entirety, including the amendment?

CLERK HANSON: (Reading) Section three, Supreme Court Organization: The Supreme Court shall consist of one chief justice and four justices, a majority of whom will be necessary to pronounce the decision which must be in writing, and joined in by the majority. The legislative assembly may increase the number of justices from five to seven. District judges shall be substituted for the chief justices in the event of disqualification or disability. In any cause, the opinion of the district judge sitting with the supreme court, shall have the same effect as the opinion of a justice of the supreme court. Mr. Chairman, section three.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I renew my motion to strike out lines twenty-five and twenty-six of this amendment, which takes it away from the legislature.

CHAIRMAN GRAYBILL: Mr. Mahoney has made a motion that the sentence, the legislative assembly may increase the number of justices from five to seven, be stricken.

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. In discussing this

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with the justices of the supreme court, they indicated that at the present time, no additional justices are needed. However, I resist this motion because it was indicated that in 1900, the original 1889 constitution was changed to allow the legislature to increase the supreme court to five from its original three. In 1919, the legislature took action and increased it to five. I think we can trust our legislature to provide the same option when the increase is needed.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I also rise in opposition to the Mahoney amendment. As an explanation of this, I discussed this section with some justices of the supreme court and they agreed with Mr. Dahood, that seven justices would greatly increase the capacity of the court to take care of their work. They informed me that this probably was a need that would arise in the future, and they explained how seven could increase their capacity as against five. The question that I presented to them is one that, I'm sure, runs through the mind of practically everyone. If seven justices have to listen to one argument, instead of five, how does that increase their capacity? They explained that with seven justices, they could operate in banks. They could parcel the writing of the opinions out, and thus increase their load. However, at the present time, their problem is not that pressing, and they feel the legislature could be depended upon at

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such time as it becomes so pressing as to increase the number when that need became that evident. At the present time, they are operating with only three law clerks, instead of five, which has been authorized. If they had their full five law clerks, which they would have had they hired them -- The salary schedule that they are authorized to offer has caused them to lose some of their law clerks, some to this convention and some to other places, so that they are constantly looking for law clerks. This would assist them. They advised me that the plans for a new supreme court facility, if they ever come about, will provide for seven justices -- a place for them -- and, they felt that before Montana would reach the point where we needed an intermediate appellate court as some states have, in the years to come, they could then increase their capacity by going to seven, and operate at that time until the load became so great it was necessary to have an intermediate appellate system. I give this as an explanation for those who wonder why this about face has been made. The recommendation of both the majority and the minority was that the legislative assembly may increase the number of justices from five to seven, and as Mr. Melvin pointed out, that authorization remained before the legislature from 1900 to 1919. Before the legislature increased it from three to five, the supreme court got so behind in their work that they had to operate on a commission basis for a while.

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CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I merely want to supplement the arguments presented by the previous delegates. I indicated that I would stand at 10:30 this morning to support a motion to have the court increased, by this Constitutional Convention, from five to seven. I'm not going to stand in support of that motion this morning, but I do want to provide some statistics to support the position adverse to the motion before this body by Delegate Mahoney. The court, presently, is operating on a case basis on some two hundred cases per year. In the last decade, the increase has been more than fifty percent. As a consequence, the increase upon each judge with respect to deliberation and decision, has been an increase of more than fifty percent. Approximately three months out of the year are spent in the supreme court hearing chamber for the purpose of listening to argument. Nine months are left then, for deliberation, for study and for decision. As I indicated on Saturday, this appellate system in Montana is a system of right to each litigant who desires to appeal, and consequently, the court does not have any power to restrict its case work. A most recent transcript that has been in the public spotlight is the Warwick case out of Bozeman. That transcript was over eleven hundred pages. When we talk about two hundred cases, we are talking about complex cases for the most part; some very extended with respect to transcript

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and testimony and some not so extended. But, in any event, two hundred cases for a five judge appellate court is a considerable amount of work. The court has indicated to me that certainly within the next decade, in all probability, it will be necessary to increase the court from five to seven. I submit that although there may not be a pressing need at the moment, we are here to draft a constitution, not for tomorrow but for the decades. Both the majority and the minority, after study, and after hearing witnesses, recommended that the legislature have the power to increase the court from five to seven. I submit the motion to strike lines twenty-five and twenty-six should be rejected. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Mahoney's motion to strike from lines twenty-five and twenty-six on page forty, section three of the minority report, the sentence: The legislative assembly may increase the number of justices from five to seven.

Mr. Mahoney.

DELEGATE MAHONEY: May I close, Mr. Chairman?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: This is the same way -- I sure feel up here this morning -- I feel like a story I one time heard, where he said he felt like a lion in a den of Daniels, and that's the way I feel amongst all these lawyers this morning defending the supreme court. We see in -- I don't

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know; I believe it was in Mr. Dahood's statement -- that they were talking, or it was either that or Mr. Habedank said -- that they were now thinking about the new building, and they were going to get seven fixed in the new building. So, it's already underway. Now, I just think we'd better start and go back here and look at the boy that's paying the taxes. This is one of the costs now. If they have two vacancies in the attorneys over there now -- and I think that they lost one just lately; in fact, I think I heard they lost him in the last week. So, the court is current. Now, if this thing should ever get serious enough, I'm sure that we could amend the constitution, and could put in the seven if it's necessary. But, I have watched the power of the judiciary up here a good long time, and they've got more special privileges than any other person. They got the special retirement, which they said was not going to cost the taxpayers a cent. All they were doing was doubling the court fees. Now, if that isn't something, I don't know what is. We saw in the last session of the legislature, when the governor -- pressure was brought on him to even ask in a special session of the legislature, to raise the judges' salaries. Now, I just wonder how far -- I think if these judges are so overworked, we can, I'm sure, find plenty that will take the job. We won't have any trouble, and I'm sure we can continue at five in place of the seven. Thank you for the time, Mr. President.

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CHAIRMAN GRAYBILL: So many as shall -- Mr. Romney, for what purpose do you rise?

DELEGATE ROMNEY: I ask for a roll call and ask for seconds. (Seconds arise)

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. So many as shall favor Mr. Mahoney's amendment, please vote Aye on the voting machines. So many as shall oppose it, vote No. Have all the delegates voted? Any delegate wish to change his vote? The vote is closed. Take the roll please.

Aasheim	- Nay	Blend	- Nay
Anderson, J.	- Nay	Bowman	- Abs
Anderson, O.	- Nay	Brazier	- Nay
Arbanas	- Nay	Brown	- Nay
Arness	- Nay	Bugbee	- Nay
Aronow	- Nay	Burkhardt	- Nay
Artz	- Nay	Cain	- Nay
Ask	- Nay	Campbell	- Nay
Babcock	- Nay	Cate	- Nay
Barnard	- Aye	Champoux	- Nay
Bates	- Aye	Choate	- Nay
Belcher	- Nay	Conover	- Nay
Berg	- Nay	Cross	- Aye
Berthelson	- Nay	Dahood	- Nay
Blaylock	- Nay	Davis	- Abs

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1	Delaney	-	Nay	Joyce	-	Nay
2	Driscoll	-	Nay	Kamhoot	-	Aye
3	Drum	-	Nay	Kelleher	-	Nay
4	Eck	-	Nay	Leuthold	-	Aye
5	Erdmann	-	Aye	Loendorf	-	Nay
6	Eskildsen	-	Aye	Lorello	-	Aye
7	Etchart	-	Nay	Mahoney	-	Aye
8	Felt	-	Abs	Mansfield	-	Aye
9	Foster	-	Nay	Martin	-	Nay
10	Furlong	-	Nay	McCarvel	-	Nay
11	Garlington	-	Nay	McDonough	-	Aye
12	Graybill	-	Nay	McKeon	-	Abs
13	Gysler	-	Nay	McNeil	-	Aye
14	Habedank	-	Nay	Melvin	-	Nay
15	Hanson, R. S.	-	Aye	Monroe	-	Nay
16	Hanson, R.	-	Nay	Murray	-	Nay
17	Harbaugh	-	Nay	Noble	-	Aye
18	Harlow	-	Nay	Nutting	-	Aye
19	Harper	-	Nay	Payne	-	Nay
20	Harrington	-	Abs	Pemberton	-	Nay
21	Heliker	-	Nay	Rebal	-	Nay
22	Holland	-	Nay	Reichert	-	Nay
23	Jacobsen	-	Nay	Robinson	-	Nay
24	James	-	Aye	Roeder	-	Nay
25	Johnson	-	Aye	Rollins	-	Nay

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Romney	-	Aye	Sullivan	-	Nay
Rygg	-	Aye	Swanberg	-	Aye
Scanlin	-	Nay	Toole	-	Nay
Schiltz	-	Nay	Van Buskirk	-	Aye
Siderius	-	Nay	Vermillion	-	Nay
Simon	-	Nay	Wagner	-	Aye
Skari	-	Nay	Ward	-	Abs
Sparks	-	Nay	Warden	-	Nay
Speer	-	Nay	Wilson	-	Aye
Studer	-	Aye	Woodmansey	-	Nay

CLERK HANSON: Mr. Chairman, twenty-four Delegates voting Aye, sixty-nine voting No.

CHAIRMAN GRAYBILL: Mrs. Babcock, your presence is here. Did you vote? You were not counted absent so you're all right.

CLERK HANSON: Mrs. Babcock voting No; seventy voting No, twenty-four voting Aye.

CHAIRMAN GRAYBILL: Very well. Seventy Delegates having voted No and twenty-four Aye, the motion fails.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman and ladies and gentlemen of the convention. As was indicated to you by Mr. Berg, there was a lot of work done over the weekend. I know I spent about five hours in the law library on Sunday. Yesterday afternoon, there was a meeting of Mr. Berg, Jack Schiltz,

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Jim Garlington very kindly offered to help. I was present and we met for four and a half or five hours and hammered out these amendments which are now all out on your desks. These amendments constitute a compromise in language and in thought on the part of the majority and the minority reports that are in the book before you. We are deeply grateful to Jim Garlington. He acted as somewhat of a referee and helped us tremendously. He volunteered for that important job. We have some differences, and I might mention those to you. Those differences are not in language; they are not in draftsmanship; they are not in technical matters, but they are in principles involved in this matter. One of the differences is whether the clerk of the supreme court should be elected or appointed. The basic difference is in the method of selection or election of the judges of the district court and the supreme court. We, as the ad hoc committee that met yesterday afternoon, could not get together on those items. So, the principles involved will have to be divided -- will have to be decided -- by the convention. We think we have drafts, or can supply drafts, rather rapidly to cover whatever this body may decide they want involved. There is another difference, which is not perhaps so major, but it does involve the county attorneys, the difference between the majority and the minority report, whether they should be called district attorneys and elected as provided by law, or we should provide in the constitution

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for the method of electing the duties of county attorneys. We have not mentioned justices of the peace courts in the constitution, but we have provided, adequately I think, for a lower court of some type or form to be determined by the legislature. In the first section, we have given broad power to the legislature to provide for such lower courts as they may deem proper. Then, in some of the amendments as we go through them, you will notice that we have provided, indirectly, for lower courts by providing that misdemeanors are to be tried in other courts, which shall be provided for by the legislature. So, in two or three places, we have given a pretty strong mandate to the legislature to provide some form of a lower court. Now, those are about, I think, a fair resume of the differences. There will be a difference also, perhaps, on the rule making power of the supreme court. That again, is in principle; it's not in mechanics of language or anything of that sort. So, we should be able to get away from most of the rangling that we started with on Saturday afternoon. I would like to point out to you some general observations on the importance of the courts. I would like to call to your attention that no matter what broad powers or rights you provide for the people in the Bill of Rights, the value of those rights are dependent entirely on how the court interprets them. In other words, the average individual who feels that his rights are being impugned upon, whether it be by the

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executive branch and that includes the bureaus and the administrative agencies; whether it be by an invalid act of the legislature; whether it be by some overzealous law enforcement officer of some type or another; whether he's wrongfully imprisoned. Having those rights be meaningful, is dependent entirely upon the courts. If the courts are ineffective; if they're not independent; if they're subject to pressure by the other two branches of the government, those rights might become meaningless. Therefore, I point out to you, that it is dreadfully important in my view, at least, that the courts be made independent, be made strong, be made unafraid to act for fear of reprisal from one of the other branches of the government. It is only in that manner that we can guarantee to our people the liberties that we wish them to have. The constitution is, true enough, the framework of government, but on the other hand, it is a last bulwark and protection that the people have. The court should also be made strong enough, independent enough, that they have no fear of striking down an unconstitutional legislative act. They should have no fear of saying to the executive branch of government, you've gone too far; you've impugned upon the rights of individuals. I understand there's a strong Natural Resources article coming out. There's going to be some strong statements made as to ecology. Those statements are meaningless, unless you have an independent judiciary that's willing and able to enforce

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those rights guaranteed to you. I just wanted to make these observations. I'm sure that you are well aware of them, but it doesn't hurt to call them to the attention of the delegates. I hope that we can keep the argument down to the basic principles involved. I think I have fairly stated the differences that do exist, and those differences will have to be decided by this convention. Thank you.

CHAIRMAN GRAYBILL: Members of the Committee, the Chair is aware that Mr. Aronow got up after we got started, and in the middle of this, but we heard his remarks anyway because I think they were necessary. Now, Members of the Committee, you now have before you on the motion of Mr. Berg, that when this committee does arise and report after having had under consideration section three of the minority report, it recommend that the same be adopted.

Mr. Eskildsen.

DELEGATE ESKILDSEN: A roll call vote please.

CHAIRMAN GRAYBILL: Very well. So many as are in favor of that, vote Aye on the voting machines, and so many as are opposed, vote No. Section three in its entirety, as amended. So many as are in favor, vote Aye. So many as are opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? Very well. Take the vote.

Aasheim	- Aye	Anderson, O.	- Aye
Anderson, J.	- Aye	Arbanas	- Aye

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1	Arness	-	Aye	Davis	-	Aye
2	Aronow	-	Aye	Delaney	-	Aye
3	Artz	-	Aye	Driscoll	-	Aye
4	Ask	-	Aye	Drum	-	Aye
5	Babcock	-	Abs	Eck	-	Aye
6	Barnard	-	Aye	Erdmann	-	Aye
7	Bates	-	Aye	Eskildsen	-	Aye
8	Belcher	-	Aye	Etchart	-	Aye
9	Berg	-	Aye	Felt	-	Abs
10	Berthelson	-	Aye	Foster	-	Aye
11	Blaylock	-	Aye	Furlong	-	Aye
12	Blend	-	Aye	Garlington	-	Aye
13	Bowman	-	Aye	Graybill	-	Aye
14	Brazier	-	Aye	Gysler	-	Aye
15	Brown	-	Aye	Habedank	-	Aye
16	Bugbee	-	Aye	Hanson, R. S.	-	Abs
17	Burkhardt	-	Aye	Hanson, R.	-	Aye
18	Cain	-	Aye	Harbaugh	-	Aye
19	Campbell	-	Aye	Harlow	-	Aye
20	Cate	-	Aye	Harper	-	Aye
21	Champoux	-	Aye	Harrington	-	Nay
22	Choate	-	Aye	Heliker	-	Aye
23	Conover	-	Aye	Holland	-	Aye
24	Cross	-	Aye	Jacobsen	-	Aye
25	Dahood	-	Aye	James	-	Aye

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Johnson	-	Aye	Robinson	-	Aye
Joyce	-	Aye	Roeder	-	Aye
Kamhoot	-	Aye	Rollins	-	Aye
Kelleher	-	Aye	Romney	-	Nay
Leuthold	-	Aye	Rygg	-	Abs
Loendorf	-	Aye	Scanlin	-	Aye
Lorello	-	Nay	Schiltz	-	Aye
Mahoney	-	Nay	Siderius	-	Aye
Mansfield	-	Aye	Simon	-	Aye
Martin	-	Aye	Skari	-	Aye
McCarvel	-	Aye	Sparks	-	Aye
McDonough	-	Aye	Speer	-	Aye
McKeon	-	Aye	Studer	-	Aye
McNeil	-	Nay	Sullivan	-	Aye
Melvin	-	Aye	Swanberg	-	Aye
Monroe	-	Aye	Toole	-	Aye
Murray	-	Aye	Van Buskirk	-	Aye
Noble	-	Abs	Vermillion	-	Aye
Nutting	-	Aye	Wagner	-	Aye
Payne	-	Aye	Ward	-	Aye
Pemberton	-	Aye	Warden	-	Aye
Rebal	-	Aye	Wilson	-	Aye
Reichert	-	Aye	Woodmansey	-	Aye

CHAIRMAN GRAYBILL: Mr. Nutting, your presence is noted.

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CLERK HANSON: Mr. President, ninety Delegates voting Aye, five voting No.

CHAIRMAN GRAYBILL: Ninety having voted Aye, and five having voted No, section three is adopted. Will the clerk please read section two in its entirety, as it originally appeared in the minority report on page forty?

CLERK HANSON: (Reading) Section two, Supreme Court Powers: The supreme court shall have final appellate jurisdiction and general supervisory and administrative control over all courts. The supreme court may make rules for the practice of law and judicial administration in all courts. The supreme court shall have such power to make rules of procedure as may be provided by law. The supreme court shall have original jurisdiction to issue, hear and determine all writs appropriate to the exercise of its jurisdiction, including the writ of habeas corpus. Mr. Chairman, section two.

CHAIRMAN GRAYBILL: Very well. Mr. Schiltz, do you have an amendment?

DELEGATE SCHILTZ: Yes, will you have the clerk read it, please?

CHAIRMAN GRAYBILL: Mr. Clerk, will you read Mr. Schiltz's amendment?

CLERK HANSON: (Reading) Mr. Chairman. I move to amend section two, page forty, lines ten through twenty, of the Judicial Committee proposal by striking the entire section

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and inserting in lieu thereof the following language: Section two, Supreme Court Powers: The supreme court shall have appellate jurisdiction including jurisdiction to issue, hear and determine writs appropriate to its appellate jurisdiction, and original jurisdiction to issue, hear and determine writs of habeas corpus. It has general supervisory control over all of the courts. It may make rules governing appellate procedure, rules of practice and procedure for all the other courts, and rules of admission to the Bar and the conduct of its members. Mr. Chairman, amendment by Schiltz.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I apologize. I have some additional material on there. It isn't very long, but it was just resolved on the floor here. If everybody would take the copy of my amendment he has, and put the following language after the word, members. Rules of procedure shall be subject to approval or disapproval by the legislature in either of the two sessions following their promulgation. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: In connection with the amendment of section two, I should like to say that this is a consensus restatement of the minority section two, which in turn, is a completely revised section two and three of the old constitution. Anticipating the chairman's admonition this morning,

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we have produced something new, reducing about a page and a half of printed language down to this paragraph. It takes care of the objections and the difficulties we were having on Saturday. The clerk did misread the word in the first line, the supreme court shall have; it reads has. I don't think there should be any difficulty with this, except possibly, a comment on the new material which I have just dictated. There's some fear among lawyers, that the supreme court will take its authority to make rules governing procedure, as authority to make substantive rules of evidence. Mr. Berg has agreed to this amendment and I'm sure most of the other lawyers would agree with it, if not all of them. I move the adoption of the amendment.

CHAIRMAN GRAYBILL: Very well. Is there discussion? Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. Again, speaking as a layman, when each one of these amendments is made, I want to know precisely why the amendment is made. For instance, why is this language necessary, rather than what's in the present minority report? What does it do that the language in the minority report right now does not do?

CHAIRMAN GRAYBILL: Mr. Schiltz, do you care to speak to that?

DELEGATE SCHILTZ: Yes. I didn't make underlines. The supreme court has appellate jurisdiction, including juris-

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diction to issue, hear and determine writs appropriate to its appellate jurisdiction. That's substantially the same as is in the present report. And original jurisdiction to issue, hear and determine writs of habeas corpus, which is also in the minority report. It has general supervisory control, which is in the minority report. It may make rules governing appellate procedure. We may have changed that; that's additional, although I think we will, as a result, delete some other material that may be in the minority report. Rules of practice and procedure for all other courts. Instead of the material in the minority report, which I think, gave the court administrative control, it spelled out what we consider administrative control to be and limited it to that amount and, of course, rules of admission to the Bar and conduct of its members, I don't know if that's in there or not. No, that's additional. Does that answer you, Mr. Blaylock?

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Then also, you add down there the rules of procedure. That's new -- what you put on just after you got through.

DELEGATE SCHILTZ: That's brand new but it's -- let me explain that. In my own mind, if the rules of procedure were in there just as it is written without the additional material, I would consider that the supreme court had only authority to say how the procedures in the various courts

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should be handled. But, as I said in the explanation, the supreme court has shown an inclination, under rules of procedure, to get into the area of substantive rules of evidence. Lawyers are extremely jealous on that subject. So, that, in turn, was a delegation from the legislature and we want to keep it in the legislature's hands, by adding this additional material.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, could I ask Mr. Schiltz a question, please?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Yes.

DELEBATE BOWMAN: Mr. Schiltz, it says, to hear and determine writs of habeas corpus in your amendment, and in the minority report, it says that they'll have the power to hear and determine all writs appropriate to the exercise of its jurisdiction. By cutting out those words, are you severely limiting the right of the court to hear all writs?

DELEGATE SCHILTZ: Really, that was kind of a Style and Drafting change, Mrs. Bowman. In the amendment, it has authority to hear and issue all writs appropriate to its appellate jurisdiction, and then we carefully guarded the right to original jurisdiction for habeas corpus.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Would the delegate, Mr. Schiltz,

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yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Yes.

DELEGATE BRAZIER: I am concerned that the record reflect just what the intention of this proposed amendment is, with respect to the scope of general supervisory control. Therefore, would you please tell me whether it is the intention of the drafters of this proposed amendment that the scope of that general supervisory control be limited to a certain remedial writ, where if it goes beyond that, and if it does go beyond that, would you please tell us for the record what is intended by the phrase?

DELEGATE SCHILTZ: Mr. Brazier. This was a compromise on my own part. I was defeated on my motion Saturday to try to take the writ of supervisory control away and I conceded that I was defeated, and so I put it in. I can see that the supreme court can, and will continue to use the writ of supervisory control under this wording.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Will Mr. Schiltz yield to a second question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I yield.

DELEGATE BRAZIER: Mr. Schiltz, I merely want it pinned down whether it's the thought of the draftsmen of the

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proposed amendment that the language goes beyond the use of a writ, and into other administrative matters.

DELEGATE SCHILTZ: You will notice that some of Mr. Berg's language having to do with administrative control, has been deleted. In other words, we did not want to put into the constitution that the supreme court could set up a bureau of administration. Mr. Berg agreed to that. I would expect that the supreme court, under general supervisory, could order a judge to go to another place, could call in a judge to sit on the court of the supreme court in the absence or vacancy of a supreme court member, that sort of thing.

CHAIRMAN GRAYBILL: Mr. Holland. Mr. Berg.

DELEGATE BERG: I don't want to take very much time on this. My construction of general supervisory control is broader than the mere issuance of the writ of supervisory control. I anticipate that perhaps, in time, the words general supervisory control may include administrative control of the judicial system. I don't want to be misunderstood on that. The question as to whether administrative control -- whether the word, and administrative control, added to that or detracted from it -- Within the group that we were working with, we deleted the words, administrative control. I, in my own mind, think that general supervisory control is just as broad, and I would not want the delegate to misinterpret, at least, my understanding of that feature.

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CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. Mr. Berg is absolutely right. That was the sense of the ad hoc committee in taking out, and administrative.

CHAIRMAN GRAYBILL: Members of the Committee, you now have before you, on the motion of Mr. Schiltz, that when this committee does arise and finally report after having had under consideration section two, including the whole of the section as amended by him, that the same be recommended for adoption. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Very well. It's adopted as amended. Will the clerk read section four?

CLERK HANSON: (Reading) Section four, District Court Powers: Original jurisdiction of all matters and causes, both civil and criminal, including the power to issue, hear, and determine original and remedial writs, is vested in the district courts, but the distribution of concurrent jurisdiction with other courts may be provided by law. Until otherwise provided by law, appeals from inferior courts must be tried anew and in the district court. District courts shall also have jurisdiction to review decisions of administrative

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boards and commissions, and they shall have such judicial jurisdiction as may be delegated by the laws of the United States and the state of Montana. The supreme court and the district court process shall extend to all parts of the state. Mr. Chairman, section four.

CHAIRMAN GRAYBILL: The Chair would like to call to the attention of the delegates that we're considering section four as it was originally, on page forty-one of the minority proposal. Since we passed it, and since we had not finally adopted it, the motions and amendments we made the other day are wiped out, and we're considering it as it was originally.

Mr. Schiltz.

DELEGATE SCHILTZ: May I have my amendment read?

CHAIRMAN GRAYBILL: Very well.

CLERK HANSON: (Reading) Mr. Chairman, I move to amend section four, page forty-one, lines two through fifteen, of the Judicial Committee proposal by striking the entire section, and inserting in lieu thereof the following paragraph: Section four, District Court Jurisdiction, subparagraph one: The district court has original jurisdiction in all criminal cases amounting to felony, and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the

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laws of the United States. Subparagraph two: The district court shall hear appeals from inferior courts as trials anew. Subparagraph three: The legislature may provide for direct review by the district court, of decisions of administrative agencies, for jurisdiction of criminal cases not amounting to felony in other courts, and for concurrent jurisdiction with other courts. Mr. Chairman, the Schiltz amendment to section four.

CHAIRMAN GRAYBILL: Very well. Mr. Schiltz's amendment to section four is allowed and open for discussion.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report after having had under consideration the amendment to section four of the judicial article, that it recommend the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This again is a consensus statement of section four, by the ad hoc committee to which Mr. Aronow referred. In response to the inquiry that Mr. Blaylock wanted, I'll try to pick out the differences between this and the minority report. We added that the district court shall have jurisdiction in criminal cases amounting to a felony. The minority report did not do that. We added the words, at law and in equity for all civil matters. The idea there was that possibly we would lose our jurisdiction for divorce cases

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in the district court, which are equitable matters. It was added in an abundance of caution. We added naturalization. I didn't personally think it was necessary, but again, in an abundance of caution, we said that the district court shall have naturalization powers and such other jurisdiction, similar to naturalization, that the United States might give to our district court. We provided that the district court should have the absolute duty to hear appeals from inferior courts, and that those would be tried anew. Then, finally, we provided that the legislature may provide for direct review by the district court, of decisions of administrative agencies. We added the material for criminal cases not amounting to a felony and concurrent jurisdiction with other courts, in case at some time in the future, there may be created other courts, with which the district court could have concurrent jurisdiction. Otherwise, it's substantially the same section -- a little bit briefer, stated a little bit differently.

CHAIRMAN GRAYBILL: Mr. Leuthold.

DELEGATE LEUTHOLD: Would Delegate Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I yield.

DELEGATE LEUTHOLD: Is this the only reference that will be made in the judiciary section in regard to justice courts and small claims courts?

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DELEGATE SCHILTZ: There's a reference by inference here, I might say, but the matter of justice courts and small claims courts was taken out in section one, when it set up what the judicial power of the state of Montana is. If you will look at section one, it says that the judicial power is vested in a supreme court and district courts, and such other courts as the legislature may provide. That's where your justice court power will have to come from, if we have it.

DELEGATE LEUTHOLD: Mr. President, one more question. I'm wondering why it can't be spelled out a little clearer so that we can be assured that we'll have justice courts and small claims courts.

DELEGATE SCHILTZ: I think, as a practical matter, the legislature will do that, but I can't assure you that it's going to. I happen to be a justice court man, and I think we ought to have it. In the present constitution, we have a separate section saying what the justice court's jurisdiction is. In the section comparable to section one, we also have justice courts included.

DELEGATE LEUTHOLD: Thank you.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. In the amendment proposed by Mr. Schiltz, I'm going to move to amend it in subsection two thereof, by changing the period after the word, anew, to a comma, and adding the words, unless otherwise pro-

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vided by law.

CHAIRMAN GRAYBILL: That's in subsection two?

DELEGATE LOENDORF: Yes, Mr. Chairman. I had provided a written amendment to the original subsection four. I didn't know these amendments were coming, so I'll have to change it to read as I've read it to you now.

CHAIRMAN GRAYBILL: Very well. Mr. Loendorf proposes an amendment to Mr. Schiltz's amendment in subsection two thereof, so that it would read: The district court shall hear appeals from inferior courts as trials anew comma, unless otherwise provided by law. He wants to add the phrase, unless otherwise provided by law to subsection two. Is that correct, Mr. Loendorf?

DELEGATE LOENDORF: That's correct, Mr. Chairman. May I speak to the amendment?

CHAIRMAN GRAYBILL: You may speak to it.

DELEGATE LOENDORF: There's no doubt in my mind, that by section one, the legislature can provide for whatever courts -- small claims court, justice courts, whatever we might wish to call them -- as they might find necessary to provide in the future. However, I'm worried that subsection two of the proposed section four here, would seriously hamper a small claims court, if we require that all appeals from the lower courts be tried anew. I might best explain that by an example. Suppose Delegate Leuthold has a claim for me for

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seventy-five dollars and we have a small claims court set up in Montana. He goes to this small claims court and, assuming it's one like they have in other states where they help him prepare the complaint so he doesn't have to hire a lawyer -- He has it processed and he wins the case there. Now, if I simply say, I appeal, then the whole thing has to be tried anew in district court. That means Mr. Leuthold, after winning this case in the small claims court, has to go hire a lawyer, who has to prepare the complaint and summons and have them issued. Even if I default and do not appear, he has to get an application for entry of default, an affadavit of amount due, an entry of default, a judgment and an execution. No lawyer is going to do that for seventy-five dollars. So, by providing this type of appeal, it seems to me that the effectiveness of a small claims court may be defeated. I recognize that trial de novo is needed in certain instances, and I think if we adopt this amendment, we have the flexibility where the legislature can provide for the type of appeal, which will provide for the most effective type of inferior courts. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Loendorf's amendment to add the words, unless otherwise provided by law.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in opposition

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because this sword cuts both ways. Number one, and I don't like to disagree with Mr. Loendorf, but when you take an appeal from the justice court to the district court, you take it upon the files and the complaint that's already in the justice court. There's no need to draft a new complaint in the district court. The other thing is that in all of the counties of the state, you aren't going to be able to have a lawyer, magistrate or justice of the peace or whatever you may call him. In a lot of the rural counties where collection agencies are extremely active, people live way out in the country, or some distance from the county seat. They may not be able to get in, or may forget, or not get in in time, so there has to be some safeguard. Most of these minor claim courts are not courts of record, where you have a court reporter or you have a transcript, and I submit to you that having a transcript typed up by a court reporter would be extremely expensive, and it would be expensive to taxpayers to provide a court reporter. So, the only practical way, is to provide for a trial anew upon appeal.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I rise in support of the proposed amendment. I want to speak not only on the proposed amendment, but its effect upon the entire article, or the entire section. In that regard, I want to first call your attention to the last sentence in subparagraph three,

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which provides for concurrent jurisdiction with other courts. This language is inserted in this section for the sole purpose of giving great flexibility to the entire inferior court system. Pursuant to this language, the legislature will be able to not only enlarge if they desire, the jurisdiction of the justice of the peace courts. It may also, if it desires, create small claims courts. It may also, if it finds it necessary in the future, provide for domestic relations courts. It may provide, if necessary, for separate probate courts. It gives great flexibility to the entire inferior court system. Now, there is prevalent throughout the United States, what is known as the two tier system. This is a more modern approach to a judicial system. The two tier system would say that there are basically two courts, the supreme court and the district court level. The district court level would, as for an example in the Montana plan, appoint magistrates. Those magistrates would be exercising exclusively original jurisdiction of the supreme court. Like Mr. Aronow suggests, were that ever to occur, then the appeal is from the district court to the supreme court, and transcripts and rather expensive appeals are required. It is my judgment and, I think, the judgment of most of the committee, that that kind of procedure Montana is not yet ready for and perhaps never will come to recognize. But, it ought not to be entirely excluded from possible consideration in the future. I believe that Mr. Loendorf's amend-

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ment accomplishes this possible, future renovation. Insofar as small claims courts are concerned -- Generally speaking, a small claims court is one of very limited jurisdiction, often times, not in excess of one hundred dollars. Those types of claims, which are always civil in nature, are not really of the character that justify appeal from a decision of the small claims court. The small claims court really has a place already in Montana. If the legislature thought it necessary to provide for appeal by trial anew in the district court from a small claims court decision, it can do so. But, it is not absolutely obliged to do it under Mr. Loendorf's amendment. It seems to me that Mr. Ioendorf's amendment increases the flexibility of this jurisdictional problem. I, therefore, support it.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I'd like to speak in support of Mr. Loendorf's amendment. I have a copy of a speech here by William Burnett, who is presiding judge of the Denver county court. In it, when he discusses the de novo trial, he says: Take, for instance, the matter of appeals. As lower court proceedings are traditionally not of record, appeals must involve a trial de novo in a higher court. Thus, the person involved in a minor case, becomes entitled to two complete trials at public expense. The convicted felon or loser of the million dollar law suit has no

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such right. This new trial appeal, which may be had irrespective of error at the original trial, is not only costly, but breeds contempt and disrespect for the lower court. It favors the rich over the poor, the affluent over the ignorant, the dishonest over the honest. An interesting object lesson may be drawn from our Colorado experience. When de novo was eliminated by making the lower courts of record, appeals from our court were cut in half. Thus, the one trial, one appeal rule, is not only good justice; it is also good economy. Therefore, I support Mr. Loendorf.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I rise in opposition to the amendment, and in favor of the committee's report as drafted. My reason for opposing the amendment is that this would open the door to permit the legislature to adopt one of the very real evils of the Montana plan. That is, appointive magistrates, from which the only appeal is to the supreme court of the state of Montana. If Mr. Leuthold lost his seventy-five dollar claim in the magistrate court as adopted by the Montana plan -- if that were to be adopted by the legislature -- his only appeal would be to the supreme court of the state of Montana. I submit that that would be grossly more expensive than to district court. Adding this magic language, unless otherwise provided by law, could permit the legislature to circumvent our district courts as appellate

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courts from our peoples' court level. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: As I said in this connection on Saturday, I oppose the amendment, but I want everybody to know what he's doing. If you follow this amendment -- and I'm speaking specifically with reference to criminal appeals -- you will run the risk of losing your protection from an aggressive JP or an aggressive police court, and you won't have an automatic right of appeal no matter how wronged you feel.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. I think it should be pointed out, without saying one way or the other whether it's good or bad, that this would open up the possibility that there would be no appeal. These lower courts could be courts that would be finally hearing a case for the first time and that would be the only time you'd be in court. I think that it opens that up.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I rise to speak against the amendment. You've got to realize that there has been no provision that the lower courts would be courts of record. If the legislature passes a law that there shall not be trials de novo, this means that you must appeal on the record. Of all the testimony that we heard, it was consistent, the evils in the present lower court system is that the law enforcement

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officers will consistently bring the case to one out of several JPs -- the one that always give them the conviction -- and they tell them all about the case in advance and get the decision in advance, before the poor man ever get in the court. Very often, they go in without a lawyer. They think that the most they can get is a fine and they wind up with a jail sentence. This is when the trial de novo -- You then go before the jury and have the jury consider it. I might give as an outstanding example what could happen. There was an instance up in Great Falls around ten years ago, where a police judge was appointed. He was a hard, law enforcement man. One of his first actions when he got on there, was to take a mother of two children, well under school age, and for a minor traffic offense give her ten days in the city jail. Now, if there had been no trial de novo, there would have been no appeal from that decision. That woman would have served the ten days. Ever since the history of justice courts and police courts in the state of Montana, there have been unreasonable decisions by judges in lower courts, and the protection has been at that time, that the person goes out after they have been agrieved -- go out and hire an attorney and then go up and have a proper trial of the matter, and let there be a decision. I submit that where we have no adequate means of having a record made in the lower court, at least by a tape recorder, it would be up to the person who is being tried to

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make sure a record was being made, that this could lead to multiple evils and the amendment should be rejected.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. I rise in support of the amendment. I realize the lawyers are all jumping up here very much disturbed by allowing the legislature to have anything to do with their own little courts. But, without the amendment, this thing is contradictory and does not allow the people any flexibility in the future, in regards to forming the kind of courts that they want. You're freezing in the inferiorness of the inferior courts, when you do not allow the legislature to improve them by law. I heartily support the amendment and I feel all of us should, if we are concerned with court improvement.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, fellow delegates. I can recognize the need for flexibility in the future, but I was in opposition to this the other day, and I would be in opposition to Mr. Loendorf's amendment. I think by putting that language in there, you can possibly remove one of the few limitations, one of the few protections, that the consumer has. Let's take the case that Mr. Loendorf was talking about. He owed Mr. Leuthold seventh-five dollars. Well, Mr. Leuthold had sold him a vacuum cleaner that didn't work. He took it back to Mr. Leuthold and Mr. Leuthold said, too bad, I got

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your money and I'm not going to fix it. So, Mr. Loendorf said, well, I'm not going to pay you. Mr. Leuthold said, well, I'm going to take you to small claims court, and he does, and under the law, under the contract, he would probably get a judgment. The only recourse that Mr. Loendorf would have, if the legislature so provided, would be to appeal to the Montana supreme court. I've done a lot of work in the justice courts. I've probably done as much work in justice courts as anybody here. I've seen poor people dinged on these things -- not just poor people, rich people too -- dinged with furnaces that don't work; dinged with carpet that they don't want; dinged with siding that isn't siding. One of the few protections you have, is to refuse to pay. If they can go into justice court and get a judgment against you, and then you have to pay two or three thousand dollars to appeal to the Montana supreme court, you're just stuck with it. I think you are opening the door to removing one of the few protections that the consumer has, in addition to the other things that have been outlined. I would ask you to resist this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Will Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I yield.

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DELEGATE BLAYLOCK: Mr. Schiltz. Under this phrase that Mr. Loendorf wants to add, it doesn't necessarily mean, does it, that if the legislature took this that they would fix it so you had to go to the supreme court? They could also fix it so you could go to the district court, couldn't they, from those inferior courts?

DELEGATE SCHILTZ: Certainly, if we want to trust the legislature to act, but it also would allow the legislature to deny such an appeal, which is my worry.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Loendorf's amendment to Mr. Schiltz's amendment subsection two of section four, as amended. Mr. Loendorf would add --

DELEGATE LOENDORF: May I close?

CHAIRMAN GRAYBILL: If you need to.

DELEGATE LOENDORF: I'm not sure that I need to but, I would like to say this. If we assume that our inferior courts now are always going to remain as they are, and never be improved, I would be against my own motion. However, in appeals from the district court now -- which no one doubts their ability to try a case -- we simply apply to the supreme court. Procedures can be provided in the future, by which you could have appeals other than trial de novo, from a small claims court or any other inferior court to a district court. This is not a limiting factor. It's something that allows

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for flexibility and it does allow for trust in the legislature. We've trusted them, I think, in many areas and should trust them in this area.

CHAIRMAN GRAYBILL: Mr. Loendorf's amendment would add the words, unless otherwise provided by law, to subsection two of section four so that it reads: The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Please use the voting machines. So many as are in favor, vote Aye, and opposed, vote No. Have all the delegates voted? Any delegate wish to change his vote? Sixty-two Delegates having voted Aye, thirty-two having voted No, it's adopted. Very well.

Mr. Davis.

DELEGATE DAVIS: Mr. President. I would move to amend section one of Mr. Schiltz's amendment by adding at the end of the paragraph, striking the period, and putting in, or the state of Montana.

CHAIRMAN GRAYBILL: After the word United States?

DELEGATE DAVIS: Yes. Strike the period and put in,

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or the state of Montana.

CHAIRMAN GRAYBILL: Very well. Mr. Davis proposes to amend section one of Mr. Schiltz's amendment by adding the words, or the state of Montana, so the last sentence reads: It shall have the power to naturalize and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana.

Mr. Davis.

DELEGATE DAVIS: Mr. President. The minority proposal includes that they shall have such additional jurisdiction as may be delegated by the laws of the United States and the state of Montana. In speaking to that the other day, Mr. Berg shows in the comments on page fifty-three -- We have also accommodated future delegation of judicial power by the United States Government or the state of Montana. In going back to the cowboy rule, they cite the Powder River rule on page fifty-one, and said: We are apprehensive as to how limited that jurisdiction may prove. Now, the original majority proposal also includes in it, for all such special actions and proceedings as are not otherwise provided for. It seems to me that this is very proper to have such further jurisdiction as a state will want to vest in the district courts in the years to come, and not to take any chance that it's limited. Thank you.

CHAIRMAN GRAYBILL: Mr. Felt, the journal may show

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your presence now, so you can vote. Very well. The issue is on Mr. Davis' amendment to add the words, or the state of Montana, to subsection one of Mr. Schiltz's amendment so that it reads that the courts shall have the power of naturalization and such other additional jurisdiction as may be designated by the laws of the United States or the state of Montana. So many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. Will Mr. Berg yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I yield.

DELEGATE MURRAY: Mr. Berg. Section one of the Schiltz amendment provides that the district court has original jurisdiction in all criminal cases amounting to felony. We seem to be removing any reference to the justice courts from the constitution. Does this language mean that inferior courts would not have the examining powers that they now have?

DELEGATE BERG: No. We believe that the legislature, as it does today, provides for examining power in the justice courts. You will note that we have given them concurrent jur-

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1 isdiction with the district courts. So, that power would exist
2 simply by legislation.
3 DELEGATE MURRAY: Where is the concurrent juris-
4 diction reference?
5 DELEGATE BERG: The last sentence in paragraph
6 three, and for concurrent jurisdiction with other courts.
7 CHAIRMAN GRAYBILL: Mr. Murray.
8 DELEGATE MURRAY: Mr. Chairman, may I inquire
9 further?
10 CHAIRMAN GRAYBILL: Yes.
11 DELEGATE MURRAY: Mr. Berg, the language of the
12 last sentence disturbs me, because it says, for jurisdiction
13 of criminal cases not amounting to felony in other courts,
14 and for concurrent jurisdiction with other courts. Is the in-
15 tent of the amendment, then, that inferior courts of whatever
16 type might be set up by the legislature, would have the power
17 to examine, is that right?
18 DELEGATE BERG: That is our intention and we so
19 discussed it.
20 DELEGATE MURRAY: Right. I raised that because I
21 see in the existing constitution, reference to the justice
22 courts having that power. Since it would be eliminated, I'm
23 sure that our records should contain your intent. Thank you.
24 DELEGATE BERG: The intent of not only the minority,
25 but the ad hoc committee, is that that arraignment power would

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still be left with the JP court by statute.

DELEGATE MURRAY: I'm glad that is so, because I think it would be chaos without it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Will Mr. Berg yield to a question, please?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Mr. Berg, I was very favorably impressed by your use of the word, all causes, in your minority Saturday. Now, the word, cases, appears instead. Is it your opinion that this means the same thing, or was there a reason for this change?

DELEGATE BERG: The word, all cases, was used, as I recall, in the California Constitution with reference to what they call the superior courts. Now, when I wrote the minority, I preferred the word, causes, because to me, it has a little more legalistic background. But, we added to that, as you will note, and matters, so that we probably covered every possible kind of litigation.

CHAIRMAN GRAYBILL: Very well. Members of the Committee, you have before you, on the motion of Mr. Schiltz, that when this committee does arise and report after having had under consideration section four, as amended, that it recommend the same be adopted. All in favor, please say Aye.

DELEGATES: Aye.

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CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's so adopted. Will the clerk please read section five as it appeared in the original minority report?

CLERK HANSON: (Reading) Section five, Judicial Districts: The legislative assembly shall divide the state into judicial districts and provide for the number of judges in each district. The legislative assembly shall have the power to change the number of judicial districts and their boundaries and the number of judges and magistrates in each district. However, each district shall be formed of compact territory and be bound by county lines, but no changes in the number or boundaries of the districts shall work a removal of any judge from office during a term for which he has been elected or appointed. The chief justice may assign the district judge and any other judges for temporary service from one district to another, and from one county to another. Mr. Chairman, section five.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I propose an amendment to section five. These are simple, almost stylish form amendments, and I think they can be handled quite readily right here on the floor. On line twenty-four, page forty-one, strike the words, or boundary, and substitute the following.

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At the beginning of the sentence, the word, or, and then in the middle of the sentence between the words, districts and shall, substitute the words, or judges therein, and at the end of line twenty-three after the word, changes, include by substitution the words, in the boundaries. So that, the sentence will read: The legislative assembly shall have the power to change the number of judicial districts and their boundaries, and the number of judges and magistrates in such districts. However, each district shall be formed of compact territory and be bounded by county lines, but no changes in the boundaries or in the number of districts, or judges therein, shall work the removal of any judge from office during the term for which he has been elected or appointed.

CHAIRMAN GRAYBILL: So many as shall be in favor of that style amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Okay, it's adopted.

DELEGATE BERG: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section five of the minority report, as it appears and amended on page forty-one, adopt the same. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

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DELEGATE BERG: The language contained in this section is essentially the same as it was in what I should call the 1889 Constitution. It has had some minor change in language, but, essentially, it says the same thing. It leaves to the legislature exclusively, the power to change judicial districts and to add judges within districts, but it specifically prohibits the legislature from making such a change as would eliminate a judge during his term of office. Mr. Chairman, I did overlook one other amendment that was done in our ad hoc committee.

CHAIRMAN GRAYBILL: All right. Go ahead and make it.

DELEGATE BERG: Again on forty-one, line twenty-seven, after the word, may, insert, upon request. The sentence would then read: The chief justice may, upon request, assign the district judge and other judges for temporary service from one district to another, and from one county to another. Mr. Chairman.

CHAIRMAN GRAYBILL: Just a moment -- so many as shall be in favor of allowing the Committee to make that change, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Very well. It's adopted.

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DELEGATE BERG: I should only comment upon that change that it was felt that a chief justice ought not to be able to assign district judges, in effect, willy-nilly around the state; that it could be open to possible abuse. The real need arises when there is heavy congestion in one district court, and therefore, upon the request of that district judge, the supreme court chief justice may assign any other judge in there to assist him in the clean up of his work. That is the reason for this ad hoc amendment.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President.

CHAIRMAN GRAYBILL: You wish to make your amendment, and if so, do you want the clerk to read it?

DELEGATE SWANBERG: Yes, if you please.

CHAIRMAN GRAYBILL: Mr. Clerk, will you read Mr. Swanberg's amendment?

CLERK HANSON: (Reading) Mr. Chairman. I move to amend section five in the minority report of the judicial article by deleting same and substituting the following language: Section five: Judicial Districts: The state shall be divided into judicial districts, each of which there shall be elected by the electors thereof, one or more judges of the district court as provided by law, whose term of office shall be four years. The legislative assembly may increase or decrease the number of judges in any judicial

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district provided that there shall be at least one judge in any district established by law, and may divide the state or any part thereof into new districts, provided that each be formed of compact territory and be bounded by county lines. No change in the number of boundaries of the district shall work a removal of any judge from office during the term for which he has been elected or appointed. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.

CHAIRMAN GRAYBILL: Mr. Swanberg, would you explain the difference between that and the minority report?

DELEGATE SWANBERG: The text of the proposed amendment, Mr. Chairman and fellow delegates, is the text of the majority report on page twenty-one. It's a little difficult to talk on this subject at the present, because we are not now discussing the election of judges. The intent of it is simply to provide that the judges of the district court shall be elected as they are at the present time, and that this body of judges so elected shall form a commission, who shall appoint the membership of the supreme court.

CHAIRMAN GRAYBILL: In other words section five, which is all you've moved, at the present time provides for the election of district judges, right? The point is that the minority report section five does not say yet how those judges will be selected. You have said in your section five

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that they will be elected, is that right?

DELEGATE SWANBERG: Mr. President. It could be the amendment -- The amendment which I propose probably should be considered in the minority report, when the method of selection of judges comes up. At that time, the amendment which I propose, could be shortened to simply provide that the judges of the district court shall be elected as they are at the present time.

CHAIRMAN GRAYBILL: We're discussing the minority report, section five, and you've made this as an amendment. Do you want to continue it as an amendment and vote on it, or do you want not to?

DELEGATE SWANBERG: If we did that, Mr. President, it would require at this time, that we start talking about the selection of judges. I question whether the Chair wants to do that.

CHAIRMAN GRAYBILL: I'd rather not do that. Do you want to withhold your section five amendment?

DELEGATE SWANBERG: If the Chair would be agreeable to that, I would also be agreeable.

CHAIRMAN GRAYBILL: As I see it, the minority report simply talks about judicial districts, and does not speak to the issue of how the judges are elected. Therefore, it would seem to me that it might be proper to withhold this, and you might be able to put it in at some other time. But,

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I don't want to say that if we adopt section five, that we won't have adopted it. It doesn't seem to me that the section five judicial districts language is very different in your proposal than it is in the minority.

DELEGATE SWANBERG: That is correct.

CHAIRMAN GRAYBILL: Very well. Let's withdraw your amendment and hold it.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I am concerned that Delegate Berg said that there was no substantial change in language from our present constitution, yet the two words, and magistrates, are inserted on line twenty-one, which do not appear in our present constitution. I'm concerned that this might, by the back door, be adopting the Montana plan. I move to strike from line twenty-one, on page forty-one, the two words, and magistrates. That change does not in any way change the fact that judges could be construed to include whatever lower court level is evolved.

CHAIRMAN GRAYBILL: Very well. Mr. McNeil has proposed an amendment to strike the words, and magistrates, on line twenty-one, so that it just says, the number of judges in each district --

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I suspect that Mr. Berg will accede to it as having been just an oversight.

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CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I do accede because it is an oversight.

CHAIRMAN GRAYBILL: It's an oversight that they didn't change that. Is there any other discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I was discussing section five yesterday with Justice Castles, who was just completing some time in connection with the criminal code discussion. He called to my attention that in the wording they had adopted in connection with the proposed criminal code, the word, magistrates, was used in this and he hoped it would be continued in the new constitution. His reasoning was that in different areas of the state of Montana, it is possible that it would be necessary to have a magistrate appointed who would have no other duty whatsoever, except to receive bail, inform a person of his rights, or do the things that a United States commissioner now does. For that reason, he hoped that we would see fit to continue the word magistrates. I give this to you for your consideration in striking a word out of this kind. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. McNeil's amendment to strike the words, and magistrates, from line twenty-one of section five on page forty-one, please say Aye.

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DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Mr. McNeil.

DELEGATE McNEIL: Would Delegate Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I yield.

DELEGATE McNEIL: Mr. Berg, the additional language that you've inserted in the last paragraph that the chief justice may, upon request -- I question is, upon request of whom?

DELEGATE BERG: We thought the amendment was quite clear that it was upon the request of the district judge, or the judge that may be asking for assistance. That was the intent of the ad hoc committee.

DELEGATE McNEIL: Is that upon the request of the judge to be assigned, or upon the request of the judge desiring assistance?

DELEGATE BERG: The one desiring assistance. We thought that would be clear from the nature of the language.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, will Mr. Berg yield to a question, please?

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CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I yield.

DELEGATE DAVIS: Mr. Berg. The last paragraph provides a chief justice may, upon request, assign and etc. Do you thereby intend to exclude the present system where the judge of a district court may hold court for any other district judge between themselves?

DELEGATE BERG: No, we purposely left this with a permissive may. We did not intend to in any way effect the present system, which is statutory, on the method of calling in other judges upon disqualification.

DELEGATE DAVIS: For the sake of the journal we're making, and the record now, they can still do it as they are presently doing it, if they wish.

DELEGATE BERG: Yes, we consider the present voluntary system to be very adequate, but we felt that there may be a situation arise where the judge in one city or another, may be overwhelmed, and he could request appointment by the supreme court.

DELEGATE DAVIS: Thank you, Mr. Berg.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: For the information of Delegate Davis and the lay people, the court indicated that this was entirely proper, and that the present system was working very well.

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CHAIRMAN GRAYBILL: Very well. Members of the Committee, you now have before you on the motion of Mr. Berg, that when this committee does arise and report after having had under consideration section five, as amended, that the same be recommended for adoption. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk please read section six of the minority report?

CLERK HANSON: (Reading) Section six, Terms and Pay of Judges: Justices of the supreme court, district court judges and other judges shall be paid as provided by law, but their salaries shall not be diminished during their term of office. Terms of office for supreme court justices shall be six years. Terms of office for district court judges shall be four years. Terms of office for other judges shall be provided by law. Mr. Chairman, section six.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I move that when this committee does arise and report after having had under consideration section six of the minority report, as is found on pages forty-one and forty-two, that it do pass the same. Mr. Chairman.

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CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: The first sentence of this section relates to the method of pay of all judges, and it leaves their salaries to the discretion of the legislature except that the legislature may not diminish the salaries of any judge during his term of office. Now, this provision that it may not be so diminished, has been contained in our present constitution. It was done by amendment, and the committee felt that it should certainly be continued in the new constitution. Insofar as the terms of offices are concerned, those relating to the supreme court now are six years, those relating to the district courts now are four years, and the terms of offices of other judges -- since we are leaving the lower court system up to the legislature, we felt their terms of office, of course, ought to be left to legislative discretion. I might remark that when we do get into the question of the selection of judges, there may be a motion to reconsider the term of office of the judge of the district court depending entirely upon the method of selection which this convention adopts. I may remark in that regard, as I think Mr. Aronow has already indicated, that we expect the selection of judges -- the next section -- to be open to many amendments, to many different methods of selection and depending upon which one may be selected, it's possible that a motion would be made to reconsider only the term of office for

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the district judge.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. Mr. Kelleher has passed out to the delegates, a proposed amendment, removing from the proposed section six, the terms of office. I presume he's going to move that in due time. Now, Mr. Kelleher has also passed out a proposed amendment to section seven on the selection of judges, which goes back to the proposed Montana plan. I suggest we can make no intelligent vote on section six at this time, until we know whether we're going to have selection under the Montana plan, under the minority plan, or election of judges. I suggest we delay consideration of section six, until 2:00 o'clock P.M., or until such other time as we finally arrive at the final vote on section seven. Section six is dependent upon section seven. I therefore move that we delay consideration of section six, at this time, until 2:00 o'clock P.M., or until such time as section seven is finally voted upon.

CHAIRMAN GRAYBILL: Mr. Berg, I take it the sense of Mr. Holland's motion is to consider section seven before section six. Does the minority have any objection to that?

DELEGATE BERG: No, I would accede to that, especially in regard to my comments regarding the term of office of the district judge. It may be dependent upon the selection method used.

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CHAIRMAN GRAYBILL: All right. Is there objection from anyone in the body to considering section seven before we consider section six?

Mr. Blaylock.

DELEGATE BLAYLOCK: I want to ask Mr. Berg a question in regard to that section. Since we've already provided in the legislative article, that a salary commission shall be established by the legislature to set the salaries of the executive, legislative and judicial elected officials, is this section even necessary?

DELEGATE BERG: I think it is insofar as the power to diminish the salary is concerned. I think it's consistent with the commission setup in the legislative article, in that their salary will be as provided by law. I think it's consistent.

CHAIRMAN GRAYBILL: Is there any objection to considering section seven before section six? Hearing none, the Chair will accede to the motion of Mr. Holland, and we will leave section six until later, and we will have the clerk read section seven.

CLERK HANSON: (Reading) Section seven, Selection of Judges: In all vacancies in the office of supreme court justices and district court judges, caused by death, resignation, removal, retirement or failure of an incumbent judge to file a declaration of candidacy for his succeeding term

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of office, the governor of the state shall nominate a supreme court or a district court judge from nominees selected in the manner provided by law. If the governor fails to nominate within thirty days after the receipt of the names of the nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not assembled shall be effective as an appointment until the end of the next session of the senate. If the nomination is not confirmed by the senate, the office shall be vacant, and another selection and nomination shall be made. Before the close of filing for nominations in the first primary election after senate confirmation, the name of the appointed judge shall be placed on a contested nonpartisan ballot, if other candidates have filed for the election to that office. If there is no primary election contest for the office, the name of the appointed judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection. Thereafter, the elected judge shall be subject to approval or rejection in a general election for each succeeding term of office. In the event of a rejection of a judge, another selection and nomination shall be made in a like manner. Mr. Chairman, section seven.

CHAIRMAN GRAYBILL: Mr. Berg.

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DELEGATE BERG: I move that when this committee does arise and report after having under consideration section seven on pages forty-two and forty-three of the minority report, that it approve and do pass the same. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I want to explain to the convention, that the minority has proposed this particular method of selection, and that we also have an alternate method of selection. I would like, briefly, to discuss the two concurrently. I understand Mr. Mason now has, or shortly will have, his proposed amendment to this section. Yesterday I spent, in my discussion of the minority report, considerable time on the method of -- I want to just briefly review the method as it is in section seven before you now. It provides for what we call merit selection, in this, that it would create a committee -- that is, a committee would be created by the legislature -- which would submit the nominees, and that means more than one, to the governor, and the governor would then nominate one from those names. The successful nominee is nevertheless subjected to senate confirmation. After senate confirmation, at the first primary election, any lawyer or other qualified candidate, may run against this appointed judge, and the successful candidate at that election becomes the elected judge. Thereafter, under the plan as it is before you now, the elected judge will stand only on approval or rejection.

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If he is rejected, the same process will be repeated. That is, there will be, initially, merit selection, senate confirmation, election and thereafter what is known as merit retention or the right of the electorate to approve or reject the elected judge, whether he has a competitor or not. Now, I want to tell you what the proposed amendment is, as I'm sure Mr. Mason will give it to you, as it relates to this one. It simply does this. It opens up the elective process at all primaries. Under this system, that is before you on pages forty-one and forty-two, the appointed judge -- that is, the nominated and appointed judge -- stands only one competitive election until he's otherwise rejected. Under the amendment, which I'm sure Mr. Mason will have before you, he would stand competitive election at all times when anyone filed against him. If he was not filed against, he nevertheless would still come on the ballot for approval or rejection. These two, what I might call alternate methods of selection, are basically the minority proposal. I'll not speak any further on it. I think from here on out, this is a job not for the lawyers especially, but for the other seventy-six delegates here to really seriously consider and decide, individually, and for yourself and so I say to you, have at it.

CHAIRMAN GRAYBILL: Mr. Holland, my point is, apparently, Mr. Melvin should move his amendment to the majority report before your amendment, is that right?

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DELEGATE HOLLAND: Yes, I think so.

CHAIRMAN GRAYBILL: Very well.

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. The amendment I proposed has been distributed to the various desks. It provides an amendment to section seven on pages forty-two and forty-three -- starting on page forty-two with line twenty-six. Would the clerk like to read the amendment, please?

CHAIRMAN GRAYBILL: Mr. Clerk, will you please read the amendment?

CLERK HANSON: (Reading) Mr. Chairman. I move to amend section seven, Selection of Judges, being pages forty-two, lines twenty-six through thirty, and page forty-three, lines one through eight to read as follows: Quote, before the close of filing for nominations in the first primary election after senate confirmation, and this is inserted, and at the primary election prior to each succeeding term of office, end of insert, the name of the appointed, striking appointed, and inserting in lieu thereof, encumbent, judge shall be placed on a contested, nonpartisan ballot if other candidates have filed for election to that office. It there is no primary election contest for the office, the name of strike the word, appointed, and insert in lieu thereof, the word, encumbent, judge shall nevertheless be placed on a ballot in the general election allowing powers of the state or district

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the choice of his approval or rejection, striking the following language, thereafter, the elected judge shall be subject to approval or rejection in a general election for each succeeding term of office, end of the strike. To further read, that in the event of rejection of a judge, another selection and nomination shall be made in like manner. Signed, Melvin.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. In substance, ladies and gentlemen of the convention, what this does is open up all primary elections. Not only that, but it's going to widen the horizon for the voters. It gives them an opportunity to vote in primary elections on the persons who have filed for the district judge, and then in the fall, if you read this amendment in connection with the rest of the section, you'll see that it provides the voters a choice -- either between two candidates, or if there's only one candidate running, then rejection or approval of that encumbent candidate. Now, we noted in our statistics, that since 1952, there have been eighty-four elections for district judges. In those elections, there were eighteen encumbents. Only one of the encumbents, incidentally, was turned out of office. But, this means that since 1952, there has been sixty-six elections where the voters had no choice. The encumbent was assured of election by receiving a mere vote. This particular feature, I think, will overcome that area. Not only that, but I think this affords

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the voters an opportunity to select in all primary elections. Let us assume, for instance, that a lawyer who has practiced in a community for twelve years, now decides to run for the office of district judge. With the primaries open at each election time, any qualified candidate can file for the office. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. I have a substitute motion. The substitute motion is in the Judiciary Committee Proposal dated February 26, 1972 and the substance is in the second paragraph thereof. The clerk has it. I move that -- will the clerk please read the second paragraph of the proposed amendment I have up there?

CLERK HANSON: Mr. Chairman. I move to amend section seven of the Judiciary Committee minority proposal, being page forty-two, lines ten through thirty, and page forty-three, lines one through eight, by deleting the section in its entirety and inserting in lieu thereof the following material: Quote, the justices of the supreme court shall be elected by the electors of the state at large, and the term of the office of the judges of the supreme court, except as in this constitution otherwise provided, shall be six years. There shall be elected by the electors of each judicial district one or more judges of the district court, as provided by law, whose term of office shall be four years, end quote. Signed,

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Holland.

DELEGATE HOLLAND: On the second line of that amendment, I think you made a mistake. You read, judges of the supreme court, rather than, justices of the supreme court. Will the record so indicate?

CHAIRMAN GRAYBILL: It says, justices, yes.

DELEGATE HOLLAND: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Like Mr. Berg, I spoke about the majority proposal the other day. This is the majority proposal for the election of the supreme court judges and the election of the district court judges. I'm not going to speak in length about this. I do wish to point out that, historically, the state of Montana -- the people of the state of Montana -- have had control of their judiciary through their election of the judicial officers. The testimony before the committee was to the effect that the present judiciary is superior; its courts are current, and it's working fine. I believe that, overwhelmingly, the people of the state of Montana want to retain their right to vote for judges. I sincerely urge this committee not to give up this valuable right, and to retain the full election of your supreme court and your district court judges.

CHAIRMAN GRAYBILL: Where is Mr. Kelleher? Is Mr. Kelleher in the chamber? Very well.

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Mr. Schiltz. Just a moment. Mr. Kelleher, the situation now is that we have a minority report moved by Mr. Berg. We have an amendment to the minority report by Mr. Melvin, giving a second alternative. We have a substitute motion by Mr. Holland for the election of judges. Now, Mr. Kelleher, it is not in order for you to add another amendment. However, if you wish to explain the amendment you will make, if the time ever arises, then I will let you do so, and then we will have the four plans before the body.

Mr. Kelleher.

DELEGATE KELLEHER: I'll speak on my proposal to appoint judges rather than elect judges, whenever the Chair deems it appropriate.

CHAIRMAN GRAYBILL: I think it would be appropriate for you to explain that alternative now, so that the body will have all four items in mind when they go to decide.

DELEGATE KELLEHER: Is it the Chair's desire that I explain how it operates rather than argue for it?

CHAIRMAN GRAYBILL: Yes, the motion is not in order, but you may explain the motion you would make if a motion were in order.

DELEGATE KELLEHER: But I will be allowed to argue later on in support of my motion?

CHAIRMAN GRAYBILL: If we ever get to that point. The point is, we really have four plans. We have two minority

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plans. We have the majority or the -- at least, Mr. Holland's plan to elect, and I take it you want to move the Montana plan of appointive judges. Now, I don't know whether you want to move it, but I want to get all of those ideas before the body, and then the body will act. Whether or not you'll have an opportunity to amend or not, will depend on how they act.

DELEGATE KELLEHER: Well then, I better say -- make my comments now. They're very little.

CHAIRMAN GRAYBILL: Keep very brief, please, as the others have --

DELEGATE KELLEHER: Yes, sir, I plan to. Fellow Delegates, in short, my proposal that you have before you, would provide that the governor of Montana would get two or four names -- say from a commission as it appears later in the minority plan -- and appoint one of those four lawyers, or two lawyers, as a judge. This judge would serve during good behavior. This is nothing new; it's nothing but the federal plan, really. The federal judiciary has used it for close to two hundred years since the days of the Revolution. Our supreme court judges and our district court judges are appointed according to that plan. Now, this plan that I have here -- Professor, can I have your attention please? You're now in my class. -- has two advantages over the federal system. It catches the nominees coming in -- it screens them coming in, which we don't have under the federal plan, right? It

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1 screens them or gets rid of them on going out, right? Both
2 ways. Now, under the federal system, Harry Truman could ap-
3 point one of his own cronies from the Pendergast machine down
4 in Kansas City as a federal judge. He might or might not ask
5 the American Bar. You know what trouble Mr. Nixon had with
6 the American Bar Association. I don't know whether he's going
7 to ask their opinion any more. After these people have been
8 screened, their names would go to the governor. The governor
9 would appoint one of them, and then they would go to the sen-
10 ate for approval, for additional screening. How long would
11 they serve? They would serve during good behavior. Now,
12 there were two proposals that I talked to a lay delegate here
13 about. I asked him about two other matters, and that was the
14 age limitation. I was going to put in an age limitation of
15 sixty-five, and I decided not to. He thought it should be
16 there. I'm going to still leave that out. One district judge
17 told me that he thought age sixty for a trial judge was a
18 good cut off date and I'm not so sure he's wrong. Most of
19 you that are trial lawyers know that the strain on trial judges
20 to make decisions like that, is very hard and very difficult,
21 especially in the larger communities. Another change I plan
22 to make if you accept my proposal when we get to the commis-
23 sion, I do not want any lawyers on the commission -- just lay
24 people. In that way, it would not be suspect. Let's face it,
25 the lay people in this convention hall are no different than

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the lay people on the outside. You distrust lawyers. That's a fact of life. You distrust us as a profession. I see the professor nodding concurrence. (Laughter) Now, as far as appointing judges rather than electing -- Oh, I told you how we would screen them going out. We'll have the minority's report for screening them, to get rid of them at the tail end.

CHAIRMAN GRAYBILL: That's repetitious, Mr. Kelleher. Keep going.

DELEGATE KELLEHER: All right, thank you. Now, what is the difference between electing judges and electing legislative candidates? A legislative candidate is a partisan politician. He's concerned with taxes, the type of taxes, where revenue is coming from. He is concerned with spending, and this is a very important matter. What are you going to do with your money after you've collected it? Whether it goes for schools or roads, he's concerned with spending money for environment or not spending it, etc. A judicial candidate -- I have run for congress twice. I think there's only one other member in this chamber that can say that. We're both losers. (Laughter)

CHAIRMAN GRAYBILL: You're out of order, Mr. Kelleher. You're badly out of order. Now, come on.

DELEGATE KELLEHER: -- supreme court justices and candidates for supreme court justice, and I've always felt so sorry for them. At least, we had something to say. We might

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not have gotten elected, but we had something to say. But, the judicial candidate, what can he say to you? I'm going to give you republican justice. I'm going to give you democratic justice. Is he going to say, I'm going to rule for Montana Power if you have a suit against them? Is he going to say, I'm always going to rule for widows and orphans? What can he say? So, this nonsense about electing judges, I say we're just trying to kid ourselves. The people know that they don't elect judges. My clients call me, your clients call you and say, who should I vote for, Judge X or Judge Y? They don't know. A proposal has been made that we appropriate money for these judges to run, so we don't need to worry about quote, bi, close quote, judges. You will recall the members of the Finance Committee and the Legislative Committee that I put in two proposals to allow taxpayers to adopt a new federal plan, where they could --

CHAIRMAN GRAYBILL: Now, Mr. Kelleher, I do want you to stick to the issue of appointing judges. I'm not interested in your other proposals. I'm going to give you time to make your speech, but I'm not going to have an hour speech. You're either going to limit yourself to that, or you're going to be out of order.

DELEGATE KELLEHER: I just want to talk about --

CHAIRMAN GRAYBILL: You can talk about appointing judges or else sit down. Your motion is out of order. You

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may explain the motion you would make if you had the chance. That's all you may do. Now, we're going to get this decision decided this morning, and you're not going to talk about everything else. So, either decide to talk on the issue or please sit down.

DELEGATE KELLEHER: The judge who is elected is going to be the popular judge. He, not necessarily, will be the best judge, but he will be the most popular judge. There are many examples of that, and in view of the Chair's ruling, I'm not going to go through those. Under the present system, a senile judge may be elected, and I think even the lay people know of senile judges who have been returned to the bench, because they were popular judges. A judge very often must make an unpopular decision. Every time a judge makes a decision, you must understand that there must be a loser. That's the nature of the judging business. If he makes an unpopular decision in connection with a criminal case, this may cost him election. Judge Bottomley, in 1954, almost was defeated -- lost many votes over an unpopular decision. In Oklahoma, they elect judges, and they had a very unfortunate situation down there with two associate justices and, I believe, the chief justice were involved in bribery. If you appoint judges that don't need to run for reelection every four years, or six years, or worry where their money is coming from, you've got a true independent judiciary that you don't need to worry about.

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We talk about humbling judges -- there's a lot of difference between humbling a man and humiliating him, and requiring him to go down and beg for money. I think when you do require a candidate for a judicial office to beg for money, that you're opening up the door to many abuses. Finally, the last argument is that the lay people do not want elected judges. I say that we should have the courage to make a decision and then let the people in June decide whether they want elected or appointed judges, when they accept or reject the constitution. It is time that we had the courage to make a decision on the floor of this chamber. Our people do not necessarily want elected or appointed judges. What they want are the best judges, and the most competent judges, and the only way we're going to get them is by appointing them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Ladies and gentlemen of the body, you may wish to take your pencils and jot down some notes on where we stand. Mr. Berg moved the minority report on page forty-two and forty-three of section seven. The purpose of the minority report is to have a commission set up by the legislature, that would give the governor nominees, and the governor would nominate from the commission, or from whatever method the legislature has determined, I should say. Now, at the first primary, it would be a contested, nonpartisan election. Later on, if that judge passed that test, he would

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only have to stand for approval or rejection. Until he was rejected, he would continue to serve. If he was rejected, we'd go back through and the governor would appoint somebody else, and we'd have another contested, nonpartisan election. The point being, that once he passed his first contested, nonpartisan election, he only runs on approval or rejection. Now, Mr. Melvin moved an amendment. That's Number Two plan. The purpose of the amendment is to say that at each succeeding election, this man that has been appointed in the manner we've just said and has run, must always run at a contested, nonpartisan election. At each succeeding primary, we go right back through, and his name is automatically on, but others can come on if they want to. Mr. Melvin's plan amounts to changing considerably the method of selection, that is, it uses the minority plan's method of selecting but it does require regular elections. Then, Mr. Holland moved a substitute motion, which is essentially the majority report boiled down, and it requires the election of judges -- the supreme court for six years, and the district court for four years. So, we have those three plans before us. Now, because of the rules where we only allow one substitute and two amendments, Mr. Kelleher did not have a motion available. I had him explain to you that if a motion were available, he might make the motion to have judges appointed to serve on good behavior. That alternative might become available, depending on what you do with the other three.

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Now, the argument is on Mr. Holland's motion for the election of judges. That's the last substitute amendment. So, the debate will be on Mr. Holland's substitute motion that judges be elected, instead of the manner as provided by the minority or Mr. Melvin's amendment. Is there discussion?

Mr. Swanberg.

DELEGATE SWANBERG: Is another motion in order at this time?

CHAIRMAN GRAYBILL: No motions in order. You may explain another position if you want to.

DELEGATE SWANBERG: Mr. President and Fellow Delegates. I think that we have arrived at one of those other major turning points in this whole convention. Certainly, the problems in the legislature have been met and dealt with, I think, very adequately by this body. I now submit that the time has come to deal with this other major problem, and that has to do with the election of the membership of our supreme court. We heard last Saturday, the rather moving and half comic description by Delegate Schiltz of the turmoil he went through in the process of running for office on the supreme court. I think we can all agree that it is a rather pointless process. The electors at large, do not really know the qualiications of the man they are voting for. The candidate runs nonpartisan. He's compelled to rely on his own resources, unless he wants to take money from some, no doubt, interested

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1 donor. The process has to be changed. The thrust of the min-
2 ority proposal is to change this by a commission elected by
3 the governor. The thrust of the majority proposal is to
4 leave it as it is. You have been given these two choices. I
5 submit that there is a third alternative, which is simple and
6 quite workable. When Delegate Schiltz spoke about his problem
7 of election to the supreme court, we did not hear any comment
8 at all from Delegate Berg, who is a district judge in Bozeman,
9 about any difficulties that he had had. We can only assume,
10 and I think it's common knowledge, that the public at large,
11 is generally satisfied with the method of the election of the
12 district court judges. Some attempts have been made here by
13 the fact that in many instances, these district court judges
14 run unopposed. I would submit, for your consideration, that
15 this applies in many other offices. The reason is not for
16 a lack of interest in the job. The reason is simply because
17 the man in office is doing a good job, and no one will run
18 against him. This is pretty much the case in our county, not
19 only in the case of the district judges, but I'm happy to be
20 able to say, in the case of our sheriff. He has held that
21 office for something like twenty years and, at no time, to
22 my recollection, has he ever been opposed. Is that because he
23 is inefficient or no one is interested in the office? No,
24 it's because he's doing an outstanding job. I would submit,
25 then, that we leave the election of our district court judges

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as they are. The system is working admirably. We're getting, generally, good people with an occasional person who may not be quite as qualified as someone else. As a general proposition, and taking the elective process for what it is, we get pretty good district judges in our district courts. I don't think anybody here in the body would disagree with that. Now then, having gone that far; having provided in the constitution for the election of our district court judges, I submit that we will have also created a very admirable commission for the selection of our supreme court justices. The district court judges, as a body, twenty-eight of them, would themselves be a commission for the selection of the membership of the supreme court. Where else could you find a commission as able as this one? All of them judges, all of them as free from politics as you could possibly get, all of them elected by the people -- none of this elected by the governor bit -- and at one stroke, you would have eliminated the problem of the election of the supreme court justices by the people in an inadequate manner, and also have provided a very good commission for the handling of the supreme court personnel. I have submitted a substitute motion to all of these motions, which would provide that the district court judges be elected as they are now, and that this group, acting as a body under such terms as may be prescribed by the legislature, would appoint and fill vacancies in the supreme court. Third, there is precedent for this. I don't

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know of any other state that has the system, but we get into some other fields, I would like to point out that the pope of the catholic church is elected in this manner. I would rather suspect that the heads of all the other churches are probably elected in the same manner. The system has worked for centuries, and I think would make a very admirable solution to our difficulties here. It lies in between both proposals.

CHAIRMAN GRAYBILL: Very well. Mr. Swanberg has explained another proposal, which you could add as a fifth point, namely that the supreme court would be appointed by district court judges, but the district court judges would be elected. Now, ladies and gentlemen, the discussion is on Mr. Holland's substitute motion that the justices of the supreme court shall be elected by the electors of the state at large, and the terms of the offices of the justices of the supreme court, except as in this constitution otherwise provided, shall be six years. There shall be elected by the electors of each judicial district, one or more judges of the judicial district -- of the district court -- as provided by law whose terms shall be four years. That's the issue before us.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would like to speak in behalf of Mr. Holland's amendment. I said most of what I had to say the other day. I didn't intend it to be all that comic, but I was very serious about it. I would like

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to make a couple responses that bear answering. Mr. Garlington talked the other day about the problem of thirty-three judges and how we get them, and what an imposition it is upon them to require them to run for reelection and possibly be defeated, and have lost their practice in the meantime. I believe, for those judges, and I know it's an imperfection in the system. However, I'm more concerned about seven hundred thousand people than I am thirty-three judges. I think Montana is unique. I think we can't adopt the plan or program that we find in Missouri or some other state, because Montana has more corporate influences than any of those states. I inquired specifically of the President of the American Judicature Society, who responded about the state of Wyoming. He said, well, they have a railroad. They have a railroad that has an influence. We have a railroad plus. As to Mr. Swanberg's comments, I think personally, that it's more important to elect the supreme court judges than it is the district court judges. District court judges aren't making policy. It's the policy that the supreme court makes that should be rejected or adopted by the electorate. I think also -- I can't resist throwing in something every now and then -- that your thing about the pope in Rome being elected in this fashion. The fallacy is that the pope doesn't have a bunch of Baptists helping in on the election either. So far as Mr. Berg's proposition is concerned, it has the terrible fault that we always start with an encumbent,

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and the same is true of Mr. Melvin's. The encumbent system in the state of Montana has been the real problem. It has insured the election of anybody who was appointed by the governor. Finally, I must urge you that we have, with Mr. Holland's plan, absolutely the best screening process in the world, and that is the electorate. Thank you.

CHAIRMAN GRAYBILL: Mr. Rod Hanson.

DELEGATE ROD HANSON: Mr. President. I rise in support of Mr. Holland's motion. I served on the Judiciary Committee, as probably most of you know, and I was divided and had mixed emotions between the two plans, because I was dissatisfied with the present court system. We worked long and hard to try and devise a method of appointing a committee that would be a nonpartial committee, or a committee that would not be controlled by some special interest or interests. The Committee agreed, I think, that we could not do this because we decided that we would not determine how to arrive at the proposition of this committee ourselves, but pass it on to the legislature. If this committee, in our group, with the witnesses and the testimony that we had, couldn't compose a committee that would not be controlled, then I don't know how the legislature is going to do that. It was said that the reason that our judges are always reelected is because they must be good judges. If they made an unpopular decision, you can be assured that they would be tossed out of office. I can assure

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you that there have been several unpopular decisions in my mind, and they were reelected. I think that with Mr. Holland's proposal, and then his proposal later on, which says in effect that a person who is appointed to the justice position, cannot run for reelection for at least a year, would take care of this. Mr. Schiltz pointed out Saturday that in the selection of the commission that handled the works for this convention, they picked sixteen people -- four from the house, four from the senate, four from the supreme court, and four by the governor, and each body selected two from each political party. With this wide diversion of selection, Delegate Schiltz pointed out that we had four representatives on the commission that were representatives of the Montana Power Company. If this is the case, then I am sure that we are going to have a tough time, whether we devise the method of selecting the committee, or whether the legislature, in its wisdom, finally is allowed to devise the means of selecting this committee, coming up with a committee that does not have at least some semblance of control by some special interests. I submit that after struggling with this decision for the several weeks that the committee has worked, I have decided that it's best to leave it with the people, because I think that in the long run, the people are going to make the best decision. We are, at least, not going to have to worry about some particular group of people controlling the people unless they can do it the hard

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way, and that is to get out and get to all of them that vote. I think that we do stand the best chance by continuing the election, and I would hope later on, adopting the provision that a person appointed cannot seek reelection for at least a year, because I think therein will take care of the problems that we have under the present system, where anybody that's appointed to a judgship gets reelected for at least one or two reasons that are pretty evident, and one is that it's pretty tough for a lawyer who has to appear before the court, to run against the man that he has to appear before. So, for that reason, I don't think you get too many people that challenge an encumbent judge. The second reason is that, of course, we all know once your name is well known and you are an encumbent, unless there is something pretty wrong, that your chance of getting reelected is much greater than it is if you're a newcomer on the political scene. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE CHAIRMAN: Mr. Chairman. I rise in support of Mr. Mason's amendment, and in opposition to Mr. Holland's substitute motion. I think that this body is agreed that we need to have an independent judiciary. I think where we're hung up is our definition of how we get an independent judiciary. I do not believe that the system that we have now really provides for election of judges. I feel that we go to the polls and we vote for the person who has been nominated by the gov-

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ernor, without consultation with anybody. I think that if we offer this to the public to vote on in June, we have actually given them no choice at all. If they're happy with what we have now, they can vote against what we're going to offer. If we offer them exactly what we have now, they have not been given a choice. I agree with Mr. Hanson, that people are going to make the decision, or at least I think they ought to be given the chance to make the decision. We did, in fact, discuss for a long time, how we were going to select a committee that was going to be pure enough to select a candidate for judge, and it's impossible to select a committee that's going to be that pure. I don't think that any of us are that pure. For this very reason, I think it's extremely important that we do not spell out the mechanics of the composition of such a committee. If we spell the mechanics out wrong, then we're stuck with it. If we leave it to the legislature, and they make a mistake, it's much easier to rectify the mistake. I do not believe that there's any more justification for the supposition or suspicion of universal venality in human nature than there is for the supposition of universal rectitude. Some good judges will be obtained under almost any system that we decide to go with. I'm merely saying that under the minority proposal, we have a much better chance of getting better judges.

CHAIRMAN GRAYBILL: Mr. Harlow.

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DELEGATE HARLOW: Mr. President. I rise in opposition to Mr. Holland's plan, and in support of Mr. Melvin's plan. I oppose Mr. Holland's plan on the basis that it is working poorly now. We have no control over whom the governor appoints. It has been proven by history, that the appointee of the governor tends to succeed himself. This is not the time to talk strongly, or discuss Mr. Melvin's plan, but it encompasses all of the good things that we need in the selection of judges, all the good things that we need and have in giving the choice to the people, and I think it is time now to turn down Mr. Holland's plan and come to the discussion of the good points and the fine points in Mr. Melvin's plan.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. Is an amendment to the proposal now under discussion in order?

CHAIRMAN GRAYBILL: No.

Mrs. Reichert.

DELEGATE REICHERT: Will Delegate Holland yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I yield.

DELEGATE REICHERT: Mr. Holland. Under Mr. Melvin's plan, is it not true that, despite the fact that there would be one nominee who would have gone through this commission and been appointed by the governor and confirmed by the senate,

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that in addition to this nominee, there could be other nominees? It says something to the effect that a contested, nonpartisan ballot -- Is it not true that this would be election in the true sense, except one of the candidates would have been nominated?

DELEGATE HOLLAND: The problem with Mr. Melvin's plan is, initially, someone is picked by a commission. The names are submitted to the governor, and that person is then appointed to the office. Later on, there are contested elections. In other words, that person can be defeated. But, under the majority plan, there would be no one appointed when there was a vacancy occurring or when the judge didn't intend to run. No one would be appointed. Those desiring to run would run on their own merits. Now, the basic objection I have is that we just feel we couldn't get an unbiased commission, that the commission would pick the first candidate. If a special interest group dominated the commission, then we would have that person in as an encumbent, and the other candidates wouldn't have an equal chance for the office. Under the majority plan, all candidates for the office -- and generally, when there is a vacancy, there are more than two -- run and the electorate has a full choice of everyone who wishes to run.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: My second question is, at the

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Romney hearing where we discussed the judicial article, Mr. Melvin had his tentative alternate to the minority report, and it was essentially what we have now. My question is, at that time, I have in my notes that Mr. Holland could support this. How do you feel now?

DELEGATE HOLLAND: I told Mr. Melvin I could live with it. I find it greatly superior to the minority plan as advanced by Mr. Berg. Basically -- I might as well say this now -- Mr. Berg stated that the majority had not considered the merit selection. We did. We asked all the proponents of the Montana plan, how can we guarantee that this commission -- the ones that name the candidates -- won't be dominated by some special interest group. They told us fairly that there is no way they can do so. Mrs. Bowman, if I understand the sense of what she just told us, it's the same thing. I have honestly tried to figure out how we could do it. I came to this conclusion. If the legislature, who is going to implement this thing, were to delegate to the secretary general of the United Nations -- he says, all right, pick a country, any country in the world, but just don't tell us who it is. Let's say nobody in Montana would know, and they picked, let's say, Germany. They pick the five best legal minds in Germany, then when a vacancy occurred -- they wouldn't know they were picking for Montana -- the choice would be sent over to Montana, and then they would pick the right man. The reason I worry

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about even an elaborate scheme like that is because I know a man in Butte, Montana. He's got an office over there. If such a commission were picked on Monday, he'd have that commission out to dinner by Wednesday, and by Friday they'd be checking every decision with it. I mean this sincerely. This --

CHAIRMAN GRAYBILL: All right. I think you've answered the question. It has been called to my attention that I may be wrong on my last ruling, and that is, that we have the minority report which was moved. Then, we have Mr. Melvin's one amendment and the substitute motion, and I guess I am in error in that I should allow amendments to the substitute motion if they're on the subject of the substitute motions. Mr. Davis, I think I was wrong in ruling you out of order.

DELEGATE DAVIS: That's quite all right. At this time, if it would please the Chair, I would like to amend -- and I haven't had time to have it typed and placed on the desks, so I'll give it to you as soon as I read it, if I may -- to add a second paragraph to the majority proposal which, in effect, is the last sentence of Mr. Melvin's, which would read as follows: If there is no primary election contest for the office, the name of the encumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district, the choice of his approval

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or rejection. In the event of rejection of a judge, his office will be declared vacant and be filled as herein provided for filling of vacancies.

CHAIRMAN GRAYBILL: I don't see that as the last sentence of Mr. Melvin's.

DELEGATE DAVIS: It's a little departure from the last sentence but --

CHAIRMAN GRAYBILL: This sentence, if there is no primary election contest for the office, the name of the encumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district, the choice of his approval or rejection. Is that it?

DELEGATE DAVIS: Yes, sir, and in addition, to provide in some manner -- and my language may not be quite proper -- but, in the event of rejection of a judge, the vacancy will be filled as provided under the title on vacancies, however we come up with that.

CHAIRMAN GRAYBILL: I think if you left it out, you would still have it covered because there would be a vacancy.

DELEGATE DAVIS: That's probably correct.

CHAIRMAN GRAYBILL: Mr. Davis' amendment has the effect of adding language which you have on your desks. It's the middle sentence of Mr. Melvin's proposal. It would add that to Mr. Holland's language. Mr. Holland says that the judges shall be elected and then sets up the term of the supreme

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court and the district court. Mr. Davis' amendment would add this sentence: If there is no primary election contest for the office, the name of the encumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state and district, the choice of his approval or rejection. The issue is on your amendment, Mr. Davis.

DELEGATE DAVIS: I think we can perhaps accomplish some of the things we're trying to do by this amendment, in the form of a more or less compromise. There's really not this big a difference between any of these. They're first appointed, but at the moment, they're appointed by the governor. There's no reason that I can think of why the governor won't make the best appointment of the best person available, or any governor at any time. I am sure that the committee is not going to change this too much. But, there's another thing that concerns me, and that is the right to run for public office. We've got a lot of rights going to come under the Bill of Rights. Who's going to have the right to run for public office? Can anyone in the United States still be able to run, or are we going to have a select committee tell us who has the right to run? That concerns me very much, and has throughout this discussion. You can say what you want, but any select committee is going to be a committee of the establishment. There's just no other way to get around it, or else you're not select in the eyes of the people. So, if I

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want to run for office, I probably would not be qualified because I probably wouldn't meet some of the blue ribbon standards -- blood test wise or otherwise, whether it was blue enough. But, you should have the right to run. In our county, we had elected a judge who recently passed away -- an outstanding judge, Judge Phillip Duncan. He had a doctor's degree from Stanford, when a doctor's degree required a lot of extra study. He was reelected by the people. No one ran against him. He was kept in. No one ran against him. He's the best qualified man, I think, not only in our county, but I would say in the state of Montana -- a great judge, and he died in a court room at 5 o'clock on a Saturday afternoon, when he was doing extra work, which he did all the time. On his death, a fine democratic friend of mine was appointed to fill his spot. He was the encumbent then, after election came. But, there was a gentleman from Virginia City, Montana -- his name was Frank Blair. He had practiced there for eighty years, and he thought, well, I think I'll run for this job. Now, Judge Blair wouldn't have been qualified under anyone's conceivable standards. But, Judge Blair said, I think I'll run, and everyone kind of laughed. He's eighty, he had practiced law, he had practiced water law, mining law, plaintiff's law, defense law, for all his life. He's a man of great strength of character, and also of great physical ability 'cause he wears all the rest of us lawyers into the ground. So, he gets

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into his car and he goes all over the three counties in that big district of Beaverhead, Madison and Jefferson. The people were amazed at his tenacity, and his ability, and they thought, why shouldn't Judge Blair have the right to run? And, they elected him. Well, my democratic friend is still in a state of shock, but the gentleman got elected. He took the bench. He has probably tried as many jury cases as anybody in this state in the last year. He has held court in the three counties, he stays up until midnight to wait for the jury to come in, he goes back to Virginia City and he's in Boulder the next morning. Whether that's good or bad is immaterial. He had the right to seek that office after he spent a lifetime in Montana. He had a right to do it. This plan permits the election, like we're doing now. Under vacancies, you'll still fill them by appointment, but Mr. Melvin's plan, which I heartily endorse whether it's attached to the minority, or to Mr. Holland's majority. It gives everybody the right to run, but it fills a second qualification, that if nobody does run -- isn't that what you're really getting at? You're concerned when someone doesn't file for the office. -- Under this one, if nobody files for the office, then you can say, we'll keep him or we won't keep him and go back to another method. I think this amendment, perhaps, would be a compromise, assuming that the right to elect judges is going to pass. I can't conceive how this delegation can say, we're all for the right and

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have great confidence in the voters on electing state auditors, state treasurers, governors, everyone in the executive and everybody in the legislative, that the same rules would not apply to the judiciary. It's inconceivable to me that those same voters that are going to elect a good governor, good legislators, and a good superintendent of schools, won't elect good judges. I submit that the plan that we're working under is working quite satisfactorily. It's like all plans. There are imperfections in it, but I don't think anything this Constitutional Convention will do will really change the basic problems that you criticize. Therefore, I submit this as an amendment to the majority proposal, which I think will come nearest to solving everyone's thinking in this chamber. Thank you.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. As mover of the substitute motion, I have no objections to Mr. Davis' amendment.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I rise to speak in opposition to this amendment. I recognize it as a compromise, but it's only half a compromise. What it does, in my mind, is add to the elective process what is generally referred to as merit retention. That is, if there is no competitive election, the judge nevertheless runs on his record. It over-

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1 looks the value of merit selection. It depends entirely on
2 the fulfillment of a vacancy by a gubernatorial -- and I may
3 suggest to you, pure political appointment. There has been a
4 good deal of criticism about the so called blue ribbon com-
5 mittee, that would be created by the legislature. I suggest
6 to you that that committee committing two or three or four
7 names to the governor, is going to give the governor a fairly
8 wide selection of nominees, and he can select what he wants --
9 whom he wants -- from that committee. At least, you have the
10 assurance that that nominee has been screened, that he does
11 meet the qualifications of what you want in a good judge.
12 This is a feature you do not have now, and I must recall to
13 you that this proposition will be used not only on the selection
14 of district judges, but more importantly, on the selection of
15 supreme court judges. That is, nominees or candidates for
16 the supreme court judge, or the supreme court justice, will
17 have been screened for their qualifications to sit on that
18 bench. This is an assurance that the electorate does not
19 have now, and I think you would all agree, that few of us and
20 certainly few of the general voting public, are all acquainted
21 with the qualifications, especially of the supreme court can-
22 didates. Now, under Mr. Mason's plan, this does not at all
23 prevent anyone from running against that selected candidate,
24 but it does tell the electorate this, that one of the candid-
25 ates on that ballot has, in one manner or another, met

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some screening activities, that he is in some respect qualified. He bears the endorsement -- bear this in mind -- of not only the screening committee, but also under Mr. Mason's plan, the endorsement of senate. He goes through exactly the same confirmation process, with regard to the senate, as any other department head that this constitution now proposes. If you accept Mr. Davis' amendment, you are retaining the feature of what we call, merit retention. You are ignoring merit selection. If you accept Mr. Mason's plan, you have the combination of merit selection; you have open election, and you have what Mr. Davis is proposing in merit retention. I want the people here to clearly understand these distinctions between these proposals. Now, I should like to say, if I'm not out of order, that with regard to the minority plan, it only opens up elections the first time. That is, only on the first primary, will anyone be permitted to run against that judge until he is rejected. This is a limitation. It is designed to attract lawyers who might not otherwise run for the bench. These are the differences.

CHAIRMAN GRAYBILL: Mr. Brown.

VICE PRESIDENT BROWN: Mr. President. I rise in support of Delegate Melvin's plan. I've had mixed emotions on this. I don't like a permanent appointment with no chance to ever run for judge, or have a chance to vote for an alternate. However, Mr. Berg expressed my point, but I'd like to

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carry it one point farther. Under the present system, we have one man -- namely, the governor -- appointing judges. When Governor Babcock was governor, he had a committee -- and I don't remember how it was selected, but it was from the Bar Association or our attorneys from the local area. Two judges were appointed in our area. I believe one probably wouldn't have been the governor's personal choice, but he took this selection committee and used them, and I think we get better appointments than we would with the governor alone making selection. So, I support Delegate Melvin.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I submit that under the Davis plan, we do have merit selection. I support it. The governor is not an irresponsible individual. Like Delegate Brown, I know of certain instances where appointments were made. He does discuss those appointments with qualified people throughout the state of Montana. He is very concerned about two things: One, selecting someone competent for the job and two, selecting someone that can dispense justice in that particular district that will satisfy the people of the state of Montana. Without that blue ribbon system, that Delegate Berg is talking about, we have the type of merit selection that I think commends itself to Montana. I support the Davis amendment.

CHAIRMAN GRAYBILL: Mr. Garlington.

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DELEGATE GARLINGTON: Mr. Chairman. The matter having come up, I can offer a little testimony on the subject of this Bar Association plan. I was on it. The selection of the lawyers from the Montana Bar Association to form this committee was by having election by the lawyers in each of the eight districts from which the lawyers who are on the practice commission are selected. I was elected by the lawyers in the northwest end of the state. There were seven others. The eight of us served as members of this committee. Without going into the detail of it, we tried to communicate with all the lawyers, and size up the situation, and offer some factual information to the appointing power. This committee functioned during Governor Babcock's regime. We volunteered to continue it during the present administration, but were rejected, and it has not functioned since Governor Anderson was elected.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman. I rise in support of Mr. Holland's motion. I also rise in support of whatever his uncle stands for. I think that if we are to look, perhaps, at the federal judiciary, and look to see what can be done by the president and his appointments in varying the tenor and tone of the supreme court, I think that alone might convince us that perhaps the people are best qualified to determine the way in which the court should go. I might say, Mr. Chairman, that as a law student, I felt very strongly in favor of the

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Montana plan or the appointment of judges. Later, when I graduated from law school, and had an opportunity to practice law for a few months, I switched ninety degrees and felt very strongly that all judges should be elected. I'm reminded of an older attorney in my district, who came to me after the elections and asked how I felt on appointed versus election of judges, and I said I felt strongly for the election of judges. He told me a story -- a personal experience of his -- when he was a young attorney, who had come to my district. He was practicing under a tyrannical judge, as he called him, and got together with the other attorneys of the district and they picked him as a candidate to perhaps usurp this judge's throne. I use the word throne liternally in some cases. He did usurp him, and I think the lawyers were unanimous in feeling that with the defeat of this judge, they got the better system of justice with the other judge who was elected. Also, Mr. Chairman, I think the merit system is just another word for the patronage system, and we all know where there is patronage, there is a responsibility to our patron. I am afraid that any committee, whether it be select, blue ribbon or what not, will not be a committee whose interests are the interests of the people. I am certain that the little guy will not be on the committee, but feel very certain that the big guy will be on the committee. I don't feel the big guy will be in the interests of the people. So, for all these reasons, and also

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the reason that I think we are very arrogant if we take the right of election away from the people. I support Mr. Holland's motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All right. The issue is on Mr. Davis' amendment to the substitute motion, which would add the fact that the encumbent would have to run for approval or rejection to Mr. Holland's election of judges system. Are we ready for Mr. Davis to close? Pardon me, Mr. Scanlin. All right, Mr. Scanlin waives.

Mr. Davis.

DELEGATE DAVIS: In closing, I am concerned about the use of the word screening. The use of the word screening always bothers me as to whc has the screen. I also want to say in closing that, as far as I'm concerned, the merit system is the voters. I don't think there's a system that has greater merit if it applies to all the other systems from the President of the United States on down without screening, I don't know why it should apply to the judiciary. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Davis' amendment. Now, Mr. Holland's system is elected judges, and to the elected judges system, Mr. Davis would add this sentence: If there is no primary election contest for the office, the name of the encumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or reject-

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ion. Please vote by using the voting machines. All those in favor of Mr. Davis' addition, say Aye. All those opposed, say No. Isn't that right? Haven't I stated your motion right, Mr. Davis?

DELEGATE DAVIS: Except for the last sentence which you concluded we could leave off, which is all right with me.

CHAIRMAN GRAYBILL: The amendment you're voting on is that sentence I read. It allows the approval or rejection of the voters of an encumbent that's not contested. Have all the delegates voted? Does any delegate wish to change his vote? Will you please record the vote?

Aasheim	-	Nay	Blaylock	-	Nay
Anderson, J.	-	Aye	Blend	-	Nay
Anderson, O.	-	Aye	Bowman	-	Nay
Arbanas	-	Nay	Brazier	-	Aye
Arness	-	Aye	Brown	-	Nay
Aronow	-	Aye	Bugbee	-	Nay
Artz	-	Aye	Burkhardt	-	Aye
Ask	-	Aye	Cain	-	Aye
Babcock	-	Aye	Campbell	-	Aye
Barnard	-	Aye	Cate	-	Abs
Bates	-	Aye	Champoux	-	Aye
Belcher	-	Aye	Choate	-	Aye
Berg	-	Nay	Conover	-	Aye
Berthelson	-	Nay	Cross	-	Nay

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1	Dahood	-	Aye	James	-	Aye
2	Davis	-	Aye	Johnson	-	Nay
3	Delaney	-	Aye	Joyce	-	Aye
4	Driscoll	-	Aye	Kamhoot	-	Aye
5	Drum	-	Aye	Kelleher	-	Nay
6	Eck	-	Aye	Leuthold	-	Aye
7	Erdmann	-	Aye	Loendorf	-	Aye
8	Eskildsen	-	Aye	Lorello	-	Aye
9	Etchart	-	Aye	Mahoney	-	Abs
10	Felt	-	Nay	Mansfield	-	Nay
11	Foster	-	Nay	Martin	-	Nay
12	Furlong	-	Nay	McCarvel	-	Aye
13	Garlington	-	Nay	McDonough	-	Aye
14	Graybill	-	Aye	McKeon	-	Aye
15	Gysler	-	Aye	McNeil	-	Aye
16	Habedank	-	Aye	Melvin	-	Nay
17	Hanson, R. S.	-	Aye	Monroe	-	Nay
18	Hanson, R.	-	Aye	Murray	-	Aye
19	Harbaugh	-	Nay	Noble	-	Aye
20	Harlow	-	Nay	Nutting	-	Aye
21	Harper	-	Nay	Payne	-	Nay
22	Harrington	-	Aye	Pemberton	-	Nay
23	Heliker	-	Aye	Rebal	-	Aye
24	Holland	-	Aye	Reichert	-	Nay
25	Jacobsen	-	Aye	Robinson	-	Nay

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Roeder	-	Nay	Studer	-	Nay
Rollins	-	Nay	Sullivan	-	Aye
Romney	-	Aye	Swanberg	-	Nay
Rygg	-	Aye	Toole	-	Nay
Scanlin	-	Nay	Van Buskirk	-	Aye
Schiltz	-	Aye	Vermillion	-	Nay
Siderius	-	Aye	Wagner	-	Aye
Simon	-	Aye	Ward	-	Aye
Skari	-	Nay	Warden	-	Aye
Sparks	-	Nay	Wilson	-	Aye
Speer	-	Nay	Woodmansey	-	Aye

CLERK HANSON: Mr. Chairman, sixty-one Delegates voting Aye, thirty-seven voting No.

CHAIRMAN GRAYBILL: Very well. Sixty-one Delegates having voted Aye, Mr. Davis' amendment prevails and is added to Mr. Holland's amendment. The discussion then is on the substitute motion of Mr. Holland that the justice of the supreme court be elected, the justice of the district court be elected, and the terms be six years and four years respectively with the addition that if, in the primary election, there is no contest, the encumbent judge shall nevertheless be placed on the ballot and the voters shall have the right to approve or reject him.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. President. Having nothing

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but respect and fear of the legal profession, I rise to resist Mr. Holland's substitute motion and in support of Mr. Melvin's amendment. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue before you then is on Mr. Holland's substitute motion. We'll have a roll call vote. The motion is that the justices of the supreme court shall be elected by the electors of the state at large, and the terms of office of the justices of the supreme court, except as in this constitution otherwise provided, shall be six years. There shall be elected by the electors from each judicial district, one or more judges to the district court, and their term shall be four years. It now has this addition that if there's no primary election contest, the name of the encumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his rejection or approval. So many as shall be in favor of Mr. Holland's amended motion -- substitute motion -- please vote Aye, and so many as are opposed, vote No. Have all the delegates voted? Does any delegate wish to change his vote? Please take the vote.

Aasheim	-	Nay	Aronow	-	Aye
Anderson, J.	-	Aye	Artz	-	Aye
Anderson, O.	-	Aye	Ask	-	Aye
Arbanas	-	Nay	Babcock	-	Aye
Arness	-	Aye	Barnard	-	Aye

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1	Bates	-	Aye	Eskildsen	-	Aye
2	Belcher	-	Aye	Etchart	-	Aye
3	Berg	-	Nay	Felt	-	Nay
4	Berthelson	-	Nay	Foster	-	Nay
5	Blaylock	-	Nay	Furlong	-	Nay
6	Blend	-	Nay	Garlington	-	Nay
7	Bowman	-	Nay	Graybill	-	Aye
8	Brazier	-	Aye	Gysler	-	Aye
9	Brown	-	Nay	Hebedank	-	Nay
10	Bugbee	-	Nay	Hanson, R. S.	-	Aye
11	Burkhardt	-	Nay	Hanson, R.	-	Aye
12	Cain	-	Nay	Harbaugh	-	Nay
13	Campbell	-	Nay	Harlow	-	Nay
14	Cate	-	Abs	Harper	-	Nay
15	Champoux	-	Aye	Harrington	-	Aye
16	Choate	-	Aye	Heliker	-	Aye
17	Conover	-	Nay	Holland	-	Aye
18	Cross	-	Nay	Jacobsen	-	Aye
19	Dahood	-	Aye	James	-	Nay
20	Davis	-	Aye	Johnson	-	Nay
21	Delaney	-	Aye	Joyce	-	Aye
22	Driscoll	-	Aye	Kamhoot	-	Nay
23	Drum	-	Aye	Kelleher	-	Nay
24	Eck	-	Nay	Leuthold	-	Aye
25	Erdmann	-	Aye	Loendorf	-	Nay

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Lorello	-	Aye	Romney	-	Aye
Mahoney	-	Abs	Rygg	-	Aye
Mansfield	-	Nay	Scanlin	-	Nay
Martin	-	Nay	Schiltz	-	Aye
McCarvel	-	Aye	Siderius	-	Aye
McDonough	-	Nay	Simon	-	Nay
McKeon	-	Aye	Skari	-	Nay
McNeil	-	Aye	Sparks	-	Nay
Melvin	-	Nay	Speer	-	Nay
Monroe	-	Nay	Studer	-	Nay
Murray	-	Aye	Sullivan	-	Aye
Noble	-	Aye	Swanberg	-	Aye
Nutting	-	Aye	Toole	-	Nay
Payne	-	Nay	Van Buskirk	-	Aye
Pemberton	-	Nay	Vermillion	-	Nay
Rebal	-	Aye	Wagner	-	Aye
Reichert	-	Nay	Ward	-	Nay
Robinson	-	Nay	Warden	-	Nay
Roeder	-	Nay	Wilson	-	Nay
Rollins	-	Nay	Woodmansey	-	Nay

CLERK HANSON: Mr. Chairman, forty-seven Delegates voting Aye, fifty-one voting No.

CHAIRMAN GRAYBILL: Fifty-one Delegates having voted No, and forty-seven having voted Aye, the amendment fails. We are now on consideration of Mr. Melvin's amendment to the

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minority report. Mr. Melvin's amendment would add, at line twenty-six on page forty-two -- It would have the first part of the minority report from line ten to twenty-five, but then it would add in place of the language on lines twenty-six on through the rest, the following: Before the close of filing for nominations in the first primary election after the senate confirmation, and at the primary election prior to each succeeding term of office, the name of the encumbent judge shall be placed on a contested, nonpartisan ballot, if other candidates have filed for that office. Now, if there is no primary election contest, then the encumbent nevertheless, has to run and the voters get a right to reject or approve him. The last sentence -- In the event of rejection of a judge, another selection and nomination shall be made in like manner.

Mr. Schiltz.

DELEGATE SCHILTZ: I think I have an amendment, Mr. Chairman.

CHAIRMAN GRAYBILL: Pardon?

DELEGATE SCHILTZ: I think I have an amendment, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz has an amendment. Does the clerk have Mr. Schiltz's amendment?

CLERK HANSON: No, sir.

CHAIRMAN GRAYBILL: Neither does the Chair, Mr. Schiltz.

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CLERK HANSON: Mr. Chairman. I move to amend section seven, page forty-two, line ten of the minority report Judiciary Committee Proposal, by adding after the word, quote, judges, end quote, the following: Quote, thirty days after adjournment of the first legislative session --

CHAIRMAN GRAYBILL: Just a second. Mr. Schiltz, we don't see where to amend. The word, judges, on what line? The word judges is not on -- Oh, in other words, it's to go in as a sentence ahead of the rest, is that right?

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: Very well. Now we understand. Go ahead.

CLERK HANSON: Thirty days after adjournment of the first legislative session, following adoption of this article, the offices of all supreme court and district court judges shall become vacant.

CHAIRMAN GRAYBILL: The sense of Mr. Schiltz's amendment is to add a new sentence at the beginning of section seven of the minority report. The new sentence would read: Thirty days after adjournment of the first legislative session, following the adoption of this article, the offices of all supreme court and district court judges shall become vacant. By further amending line twelve, following the word, by, by adding the words, this declaration of vacancy. The Chair presumes it to be the sense of your motion, Mr. Schiltz, that if

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we're going to have the minority report, you want it to start with a clean slate thirty days after the legislative session, is that right?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: Very well. You may speak.

DELEGATE SCHILTZ: The purpose of this amendment is as stated by the Chair. It seems to me, and I think it's unassailable, that the only reason for changing from the elected judiciary as we have it now, is because there is something wrong with the system we have now. If there's something wrong with the system we have now, it's inevitable that we've got some bad judges. If we have some bad judges now, it's only fair that we start all over with a screening committee, and start from the beginning. I see no reason to lock into our present system, for the next seventeen or eighteen years, the potential of several bad judges. This is a very simple thing to do. We start all over again. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: A point of order -- Are we on Mr. Melvin's amendment?

CHAIRMAN GRAYBILL: We are now considering Mr. Melvin's amendment, and Mr. Schiltz has amended it by adding a sentence, the sense of which is to start all over again thirty days after the next legislative session and have, if we adopt the minority report, then the governor would nominate,

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etc., all the judges anew.

DELEGATE AASHEIM: Mr. Chairman. May I ask Mr. Melvin a question?

CHAIRMAN GRAYBILL: Mr. Melvin, will you yield?

DELEGATE MELVIN: Yes.

DELEGATE AASHEIM: Mr. Melvin. You say in the primary election, if no one contests the judge, he shall still run in the general election. Would he then have a contest? Would he have anyone contesting his position in the general election that he didn't have in the primary?

DELEGATE MELVIN: Yes, Mr. Aasheim. That was the intent, that if there was opposition in the primary election, then there would be two go from the primary to the general election. Then, the winner would come out of the general election.

DELEGATE AASHEIM: Will you yield to another question? You didn't clarify the --

CHAIRMAN GRAYBILL: Mr. Aasheim, perhaps I can clear that up for you. What it says is that if anybody wants to run against this man, they can at any primary election. If nobody runs against him, so that he's unopposed, then he nevertheless has to go on the ballot, and the voters then vote whether to accept him or reject him.

DELEGATE AASHEIM: Another question.

CHAIRMAN GRAYBILL: Mr. Melvin.

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DELEGATE MELVIN: I yield.

DELEGATE AASHEIM: If he has no contest, how could the voters do anything but accept him?

DELEGATE MELVIN: If he has no contest in the general election, or in the primary election, then at the general election, the voters have a choice of approval or rejection.

CHAIRMAN GRAYBILL: And if the voters reject him, Mr. Aasheim, then the governor would appoint somebody and in the next election, he'd have to run again. In other words, it creates a vacancy when he's rejected.

DELEGATE AASHEIM: Mr. Chairman, will he yield to another question?

DELEGATE MELVIN: I yield.

DELEGATE AASHEIM: Will the question on the ballot be then, do you approve of Judge so and so's position?

CHAIRMAN GRAYBILL: Yes.

DELEGATE AASHEIM: I see.

CHAIRMAN GRAYBILL: Is there further discussion of Mr. Schiltz's amendment? Mr. Schiltz -- therefore, the issue will be on Mr. Schiltz's amendment, the purpose of which is to start all over again thirty days after the legislative session. Thirty days after adjournment of the first legislative session following the adoption of this article, the offices of all the supreme court and district court judges shall become vacant. Then, one other minor amendment to make that

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make sense in the next sentence. So many as are in favor of Mr. Schiltz's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and the amendment fails. Now, we're on Mr. Melvin's proposal.

Mr. Kelleher.

DELEGATE KELLEHER: I move my original motion.

CHAIRMAN GRAYBILL: Will the clerk read Mr. Kelleher's motion?

CLERK HANSON: (Reading) Mr. Chairman. I move to amend section seven, page forty-two, lines ten through twenty-five, to read as follows: Section seven, Selection of Judges: In all vacancies in the offices of supreme court justices and district court judges, caused by death, resignation, removal, inserting, or retirement, striking, or failure of an encumbent judge to file a declaration of candidacy for a succeeding term of office, end of the strike, the governor of the state shall nominate, and insert the words, quote, to serve during good behavior, end quote. Are there any additional changes, Mr. Kelleher?

DELEGATE KELLEHER: No.

CHAIRMAN GRAYBILL: Very well. The sense of Mr. Kelleher's amendment is to change section seven to read: In

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all vacancies in the offices of the supreme court justices and district court judges, caused by death, resignation, removal or retirement, the governor of the state shall nominate to serve during good behavior, a supreme court or district court judge from nominees selected in the manner provided by law. Then, it goes on to say that, if the governor fails to nominate within thirty days after receipt of the names, etc., and the rest of that is the same as the rest of section seven in the minority proposal. It deletes everything after line twenty-six in the minority proposal. So, the upshot of it is that Mr. Kelleher's proposal would allow the governor to nominate judges for the supreme court and district court to serve during good behavior.

DELEGATE KELLEHER: May we have a roll call vote? (Seconds rise)

CHAIRMAN GRAYBILL: A roll call vote having been called for, all those in favor of Mr. Kelleher's amendment, say Aye -- or vote Aye -- and all opposed, vote No. Have all the delegates voted? Does any delegate wish to change his vote? Very well. Close the ballot.

Aasheim	-	Nay	Aronow	-	Nay
Anderson, J.	-	Nay	Artz	-	Nay
Anderson, O.	-	Nay	Ask	-	Nay
Arbanas	-	Nay	Babcock	-	Nay
Arness	-	Nay	Barnard	-	Nay

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1	Bates	-	Nay	Eskildsen	-	Nay
2	Belcher	-	Nay	Etchart	-	Aye
3	Berg	-	Nay	Felt	-	Aye
4	Berthelson	-	Nay	Foster	-	Aye
5	Blaylock	-	Nay	Furlong	-	Nay
6	Blend	-	Nay	Garlington	-	Nay
7	Bowman	-	Nay	Graybill	-	Nay
8	Brazier	-	Nay	Gysler	-	Nay
9	Brown	-	Nay	Habedank	-	Nay
10	Bugbee	-	Aye	Hanson, R. S.	-	Nay
11	Burkhardt	-	Nay	Hanson, R.	-	Nay
12	Cain	-	Nay	Harbaugh	-	Aye
13	Campbell	-	Nay	Harlow	-	Nay
14	Cate	-	Abs	Harper	-	Nay
15	Champoux	-	Nay	Harrington	-	Nay
16	Choate	-	Nay	Heliker	-	Abs
17	Conover	-	Nay	Holland	-	Nay
18	Cross	-	Nay	Jacobsen	-	Nay
19	Dahood	-	Nay	James	-	Nay
20	Davis	-	Nay	Johnson	-	Nay
21	Delaney	-	Nay	Joyce	-	Nay
22	Driscoll	-	Nay	Kamhoot	-	Nay
23	Drum	-	Nay	Kelleher	-	Aye
24	Eck	-	Nay	Leuthold	-	Nay
25	Erdmann	-	Nay	Loendorf	-	Nay

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Lorello	-	Nay	Romney	-	Aye
Mahoney	-	Abs	Rygg	-	Nay
Mansfield	-	Nay	Scanlin	-	Aye
Martin	-	Nay	Schiltz	-	Nay
McCarvel	-	Nay	Siderius	-	Nay
McDonough	-	Nay	Simon	-	Nay
McKeon	-	Nay	Skari	-	Nay
McNeil	-	Nay	Sparks	-	Nay
Melvin	-	Nay	Speer	-	Nay
Monroe	-	Nay	Studer	-	Abs
Murray	-	Nay	Sullivan	-	Nay
Noble	-	Nay	Swanberg	-	Nay
Nutting	-	Nay	Toole	-	Aye
Payne	-	Aye	Van Buskirk	-	Nay
Pemberton	-	Aye	Vermillion	-	Nay
Rebal	-	Nay	Wagner	-	Nay
Reichert	-	Nay	Ward	-	Nay
Robinson	-	Aye	Warden	-	Nay
Roeder	-	Aye	Wilson	-	Nay
Rollins	-	Nay	Woodmansey	-	Nay

CLERK HANSON: Mr. Chairman, thirteen Delegates voting Aye, eighty-three voting No.

CHAIRMAN GRAYBILL: Eighty-three Delegates having voted No, and only thirteen Aye, that motion fails. We're back on Mr. Melvin's amendment to the majority report. The

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sense of Mr. Melvin's amendment is to say that the first paragraph of the minority report is accepted. The second paragraph, he substitutes the situation under which, at each primary election following appointment, the judge has to run and if he does not have a contested election, he nevertheless has to put his name on the ballot, and the voters get to decide whether to approve him or reject him. If he's rejected, then the governor has to appoint anew.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that section seven of the judicial article appearing on page forty-two, be amended in the following particulars: On line sixteen, after the word, judge, inserting a period, and striking all of the remaining words appearing in the first paragraph of section seven.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce moves an amendment to section seven of the minority report, which simply would allow the governor to appoint without the commission. Mr. Joyce, I'm going to rule you out of order. The reason is that your amendment does not touch Mr. Melvin's amendment, which is under consideration. If Mr. Melvin's amendment passes, then the minority report, including the language you want to strike, will be before the body, and you can remake your motion.

DELEGATE JOYCE: (Inaudible -- speaker not turned on.)

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-- rule it out of order.

CHAIRMAN GRAYBILL: You've managed to have both happen to you now. My point simply is that that issue will be perfectly preserved for consideration after we've disposed of whether or not to adopt Mr. Melvin's amendment. The issue is on Mr. Melvin's amendment which, as I stated before, says after line twenty-six, strikes the minority report and puts in language which says that the appointed judge must run at each primary election thereafter and, if he is not opposed, he must nevertheless go on the ballot for approval or rejection. If he's rejected, the governor then reappoints. So many as shall --

Mr. Foster.

DELEGATE FOSTER: May we have a roll call, Mr. Chairman? (Seconds rise)

CHAIRMAN GRAYBILL: Very well. We'll use the voting machines. So many as shall favor Mr. Melvin's amendment, please vote Aye, and so many as shall oppose, please vote No. Have all the delegates voted? Any delegate wish to change his vote? Anyone else wish to vote? Very well, the ballot is closed.

Aasheim	-	Aye	Arness	-	Nay
Anderson, J.	-	Aye	Aronow	-	Aye
Anderson, O.	-	Aye	Artz	-	Aye
Arbanas	-	Aye	Ask	-	Aye

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1	Babcock	-	Aye	Eck	-	Aye
2	Barnard	-	Aye	Erdmann	-	Aye
3	Bates	-	Aye	Eskildsen	-	Aye
4	Belcher	-	Aye	Etchart	-	Aye
5	Berg	-	Aye	Felt	-	Aye
6	Berthelson	-	Aye	Foster	-	Aye
7	Blaylock	-	Aye	Furlong	-	Aye
8	Blend	-	Aye	Garlington	-	Aye
9	Bowman	-	Aye	Graybill	-	Aye
10	Brazier	-	Aye	Gysler	-	Aye
11	Brown	-	Aye	Habedank	-	Abs
12	Bugbee	-	Aye	Hanson, R. S.	-	Aye
13	Burkhardt	-	Aye	Hanson, R.	-	Abs
14	Cain	-	Aye	Harbaugh	-	Aye
15	Campbell	-	Aye	Harlow	-	Aye
16	Cate	-	Abs	Harper	-	Aye
17	Champoux	-	Aye	Harrington	-	Aye
18	Choate	-	Aye	Heliker	-	Aye
19	Conover	-	Aye	Holland	-	Aye
20	Cross	-	Aye	Jacobsen	-	Aye
21	Dahood	-	Aye	James	-	Aye
22	Davis	-	Aye	Johnson	-	Aye
23	Delaney	-	Aye	Joyce	-	Aye
24	Driscoll	-	Aye	Kamhoot	-	Aye
25	Drum	-	Aye	Kelleher	-	Aye

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Leuthold	-	Aye	Rollins	-	Aye
Loendorf	-	Aye	Romney	-	Aye
Lorello	-	Aye	Rygg	-	Aye
Mahoney	-	Abs	Scanlin	-	Aye
Mansfield	-	Aye	Schiltz	-	Aye
Martin	-	Aye	Siderius	-	Aye
McCarvel	-	Aye	Simon	-	Aye
McDonough	-	Aye	Skari	-	Aye
McKeon	-	Aye	Sparks	-	Aye
McNeil	-	Nay	Speer	-	Aye
Melvin	-	Aye	Studer	-	Abs
Monroe	-	Aye	Sullivan	-	Aye
Murray	-	Aye	Swanberg	-	Aye
Noble	-	Aye	Toole	-	Abs
Nutting	-	Aye	Van Buskirk	-	Aye
Payne	-	Aye	Vermillion	-	Aye
Pemberton	-	Aye	Wagner	-	Aye
Rebal	-	Aye	Ward	-	Aye
Reichert	-	Aye	Warden	-	Aye
Robinson	-	Aye	Wilson	-	Aye
Roeder	-	Aye	Woodmansey	-	Aye

CLERK HANSON: Mr. Chairman, ninety-two Delegates voting Aye, two voting No.

CHAIRMAN GRAYBILL: Ninety-two Delegates having voted Aye, Mr. Melvin's amendment prevails, and the minority

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report is now amended to include section seven down to line twenty-six, as it appears on page forty-two, and from line twenty-six on, it includes Mr. Melvin's amendment. Now, I promised to recognize Mr. Joyce. Mr. Aasheim, for what purpose do you rise?

DELEGATE AASHEIM: Mr. Chairman, I want to amend section seven.

CHAIRMAN GRAYBILL: Well, you may, but I've got to let Mr. Joyce be first.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move to amend section seven of the judicial article, on page forty-two, on line sixteen, by inserting after the word, judge, a period, and striking all of the words from the word, from, in line sixteen down to the word, may, in line twenty-five.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce's amendment has the effect of eliminating the language in the minority report, as amended, which allows nomination in a manner provided by law, and would authorize the commission system. In other words, it will retain only language which would let the governor nominate, and after the governor nominates, the provisions of Mr. Melvin's amendment would take over.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. Getting to the heart of the matter on the commission system, may I submit to the

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delegates this consideration. In the first place, no matter how astute, or how brilliant, or how able, or how fairly the legislative assembly may set up a commission to select these nominees, you cannot take the human element out of the situation. To illustrate -- Assume that the first row of this convention is a commission that ultimately is selected in the manner prescribed by law, and there's a vacancy on the supreme court. Assume, for illustration purposes, that Mr. Davis and I are both vying for the job. The first thing that will happen is, I will try and call up Cedor Aronow and see if he won't go for me, and Mr. Davis will call up Mr. Anderson and see if he won't go for him. So, you'll get inter-politics on this commission trying to see who's going to get the nod of the commission. The theory of the commission is that the commission is going to screen everybody, and only select three people for the governor to pick. Well, that's fine. The only trouble with commissions is that they naturally take themselves seriously, and so of those three people that they pick, they always have one favorite. If the governor doesn't go for their favorite, then their nose gets out of joint, and they figure that the governor, in effect, made a political appointment. So, assuming that the commission recommends both Mr. Davis and I, and say Mr. Murray, who is also after the job, and the commission passes on the three of us and says, yes, all three of those would be great supreme court justices.

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They're able and talented and blah, blah, blah. Okay, what's going to happen then? It comes up to the governor, and the governor, at the current time, say is a democrat. Well, it seems to me that in the real world, it narrows down between Davis and I, and that Murray is out. Not necessarily, but that's just the way the world is. Conversely, if we have a republican governor, and the three of us are vying the same way, it just follows as the night the day, that Davis and I are out. But, of course, we have got an able judge. That's fine. But, the governor still has the right to finally pick him. Now, I submit that if we get away from the commission system in the constitution, that any governor can do like Governor Babcock did, and as I understood, Governor Anderson started to do, to have a select committee pass on people who are looking for vacancies. As I understand, why Governor Anderson abandoned that system is just for that very reason, that the commission didn't approve of who he picked. They passed various people for a couple of jobs as though they were qualified, and the governor notwithstanding, picked his man which did not meet with the favor of the majority of the commission. It seems to me, that ultimately, it comes down that on these vacancies -- you've got to fill them; they're vacant, and that the governor, having been elected by the people, you should assume that he's a responsible and honorable person, and that he will pick who he thinks is the best man.

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It doesn't mean that the governor is corrupt because he picks one of his party over another party at all. It's simply that he believes the best judge will be one who has his political philosophy. That's perfectly agreeable. President Nixon has just recently done that. It seems to me that we're just beating around the bush by having a commission, and we ought to leave it up to the discretion of whoever is governor, to pick who he wants to fill that vacancy. He can appoint any number of commissions, consult with the Bar, consult with anybody he wants, as to who he wants to select. Of course, we are always limited as to who wants the job. So, it will inevitably, narrow down to some people vying for the job. I think we can trust the governor to pick whom he thinks is the best man. Now, the quarrel -- if there is a quarrel -- with the present system, is that the governor has the right to make an appointment overnight, and that nobody knows about it. So, if I could devise some system that the governor would have to give some reasonable notice before he made this appointment to see if there wouldn't be a great hullabaloo go up around the state, maybe that would be all right. But, I don't see this committee -- no matter how it's selected, and I'm not so much afraid that it'll be dominated by any particular interest; it could very well be dominated by so called liberal interests, which would be just as bad. It seems to me that the committee system doesn't add anything at all to it,

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and that the governor, if we elect capable, honest, sincere governors, will make a choice of who he thinks will be a good judge on the bench of either the district or the supreme court.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Yes, sir.

DELEGATE HARPER: Mr. Joyce, thanks for your comments on the governor's nomination. Now, would you amplify your comments a little more to the second section of this amendment, because it also deletes the senate's confirmation of the governor's nomination. What's your word on that?

DELEGATE JOYCE: The only question on the senate's confirmation of the governor, it seems to me, is that under our system the senate is not apt to be in session. The question is whether or not the senate should be called back to confirm the appointment. The only problem I have with that system is that the Montana senate might adopt the unwritten law of the United States Senate which, in effect -- they have what they call senatorial courtesy. So, if the vacancy is in Silver Bow County, the senator from Silver Bow County, under the senatorial courtesy system, he has it understood that if the nominee of the governor is personally obnoxious to him for whatever reason, that all of his fellow senators will then turn down the confirmation. That, of course, is the

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way that the United States senators have developed for, in effect, getting their people -- they make the appointments to the lower federal courts, particularly if their party happens to be in power. I really don't see requiring senate confirmation as being any particular safeguard, and it may allow into the realm, if I may use Mr. Kelleher's phrase, another vice where we would be as bad off as we are at the present time. That's why I moved to strike the senate confirmation as well.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman. I rise to resist Mr. Joyce's substitute motion, I think is what it is. I hope that everyone realizes that what this does, in effect, is completely put us back to where we were when we were about to vote on the majority proposal. I think it's worded a little better than the majority proposal, but it says exactly the same thing, mainly, that the governor will appoint judges.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. I merely rise in opposition to the amendment. I love the way the lawyers, a little while ago, were praising the selective committee that was selected by the lawyers to help Governor Babcock select his judges. Now, it's bad. Every fifteen minutes the lawyers can change their minds and be on the other side of the question.

CHAIRMAN GRAYBILL: Very well. The question arises

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on Mr. Joyce's motion to amend section seven, by eliminating the language in line sixteen to twenty-five, which has the effect of eliminating the commission system and electing the senate confirmation. We will have a roll call vote. So many as are in favor of his amendment, please vote Aye, and those opposed, please vote No. Have all the delegates voted? Any delegate wish to change his vote? Please take the ballot.

Aasheim	-	Nay	Brown	-	Nay
Anderson, J.	-	Nay	Bugbee	-	Nay
Anderson, O.	-	Aye	Burkhardt	-	Nay
Arbanas	-	Nay	Cain	-	Nay
Arness	-	Aye	Campbell	-	Nay
Aronow	-	Aye	Cate	-	Abs
Artz	-	Aye	Champoux	-	Nay
Ask	-	Nay	Choate	-	Nay
Babcock	-	Aye	Conover	-	Nay
Barnard	-	Aye	Cross	-	Nay
Bates	-	Aye	Dahood	-	Aye
Belcher	-	Nay	Davis	-	Aye
Berg	-	Nay	Delaney	-	Aye
Berthelson	-	Nay	Driscoll	-	Aye
Blaylock	-	Nay	Drum	-	Nay
Blend	-	Nay	Eck	-	Nay
Bowman	-	Nay	Erdmann	-	Nay
Brazier	-	Aye	Eskildsen	-	Aye

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1	Etchart	-	Aye	Mahoney	-	Abs
2	Felt	-	Nay	Mansfield	-	Nay
3	Foster	-	Nay	Martin	-	Nay
4	Furlong	-	Nay	McCarvel	-	Aye
5	Garlington	-	Nay	McDonough	-	Nay
6	Graybill	-	Aye	McKeon	-	Aye
7	Gysler	-	Aye	McNeil	-	Nay
8	Habedank	-	Nay	Melvin	-	Nay
9	Hanson, R. S.	-	Nay	Monroe	-	Nay
10	Hanson, R.	-	Nay	Murray	-	Abs
11	Harbaugh	-	Nay	Noble	-	Aye
12	Harlow	-	Nay	Nutting	-	Nay
13	Harper	-	Nay	Payne	-	Nay
14	Harrington	-	Aye	Pemberton	-	Nay
15	Heliker	-	Nay	Rebal	-	Aye
16	Holland	-	Aye	Reichert	-	Nay
17	Jacobsen	-	Nay	Robinson	-	Nay
18	James	-	Nay	Roeder	-	Nay
19	Johnson	-	Nay	Rollins	-	Nay
20	Joyce	-	Aye	Romney	-	Aye
21	Kamhoot	-	Aye	Rygg	-	Nay
22	Kelleher	-	Nay	Scanlin	-	Nay
23	Leuthold	-	Nay	Schiltz	-	Nay
24	Loendorf	-	Nay	Siderius	-	Nay
25	Lorello	-	Abs	Simon	-	Nay

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Skari	-	Nay	Van Buskirk	-	Nay
Sparks	-	Nay	Vermillion	-	Nay
Speer	-	Nay	Wagner	-	Nay
Studer	-	Abs	Ward	-	Nay
Sullivan	-	Aye	Warden	-	Nay
Swanberg	-	Nay	Wilson	-	Nay
Toole	-	Nay	Woodmansey	-	Nay

CLERK HANSON: Mr. Chairman, twenty-six Delegates voting Aye, sixty-nine voting No.

CHAIRMAN GRAYBILL: Sixty-nine having voted No, and twenty-six having voted Aye, the amendment fails.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman. I move to amend section seven, page forty-two, by deleting in line eleven and in line twelve, after the word, justices, on line eleven, striking the words, and district court judges. I'll just make one brief comment. I believe that the people are in a better position to select their district court judges than they are the supreme court judges. I believe that we should retain this in the elective process.

CHAIRMAN GRAYBILL: Mr. Aasheim's amendment strikes the words, and district court judges, from lines eleven and twelve on page forty-two. It would have the effect of not allowing the governor to appoint district court judges. If it were passed, it seems to me it would require another sent-

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ence, Mr. Aasheim, where we would somehow tell how district court judges would be handled. Do you want to add that now?

DELEGATE AASHEIM: No, Mr. Chairman. I would also amend line fifteen and sixteen, to strike district court judges there. If this passes, then we will amend section seven somehow.

CHAIRMAN GRAYBILL: In other words, this amendment would have the effect of eliminating the governor's right to appoint district court judges, and if it passed, we would then have to consider what to do about that.

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. Is a substitute motion in order?

CHAIRMAN GRAYBILL: Yes.

DELEGATE ARNESS: I then move the following substitute motion as a substitute for all other motions pending.

CHAIRMAN GRAYBILL: You can just make a substitute motion for Mr. Aasheim's -- Are you going to make a substitute motion to eliminate Mr. Berg's motion that we adopt section seven of the minority report?

DELEGATE ARNESS: Yes, Mr. Chairman, I am.

CHAIRMAN GRAYBILL: You are, huh? Okay. (Laughter) Is it in writing?

DELEGATE ARNESS: Yes, it is.

CHAIRMAN GRAYBILL: Send it up to the Chair, please.

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DELEGATE ARNESS: The proposal would then read as follows.

CHAIRMAN GRAYBILL: Now, just a minute. Send it up to the Chair. Mr. Arness does not have the floor but he'll have it again after I've read his amendment. Very well. Mr. Arness makes a substitute motion. May we read it from here?

DELEGATE ARNESS: Yes, please.

CHAIRMAN GRAYBILL: The legislature shall provide for the selection, pay and terms of judges.

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. It seems to me that the difficulty that we've gotten into again, is the one that we've been in for some time here. We're really legislating. The matters that are before us here -- it's obvious from the detail into which we've descended that these are matters for the legislature to deal with. This proposal would do that. We could have either election or selection, according to whatever was best for us and for the state, according to what the people decided. If the legislature made a mistake, which it seems to me, we are about to do here, they would at least be in a position thereafter -- or their successors would be in a position thereafter -- to correct it. I submit to you that the question of what the judges' election or selection should be, is as minute and as statutory in detail as what their pay should be. One of the district judges felt that the

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matter of the pay was of sufficient importance that he should tell us, or ask us, to put something about that in the constitution. We might as well put these fellows' pay, in terms of dollars and cents, in the constitution as to put how they are going to be elected, who the committee is going to be, and the rest of it. It may be that the organized Bar has failed, and that it has not properly informed the electorate during the times when judges have come up for election, about the qualities and the capabilities of the judges. I do not think that because the Bar has failed to properly inform the public, that we should now penalize the public by freezing forever into the constitution, our opinion of the failure of the Bar to inform us. That's what we're about to do. We can avoid that problem, and I think properly, and adhere to what we ought to be doing here by leaving this to the legislature where it should be done. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The issue is on Mr. Arness' amendment. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The amendment fails. Mr. Aasheim, do you want to change your amendment now? Do you want to restate your amendment?

DELEGATE AASHEIM: (Inaudible -- speaker not turned

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on.) -- restate it?

CHAIRMAN GRAYBILL: Well, you want to delete the words, and district court judges, in lines eleven and twelve, and in lines fifteen and sixteen. I take it to be the sense of your motion that if that passes, then we would have to figure out somehow, how to take care of the district judges later, is that right?

DELEGATE AASHEIM: That's correct.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Would Mr. Aasheim yield to a question?

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Yes.

DELEGATE ROD HANSON: Mag, do you propose later -- and I know you're talking about making some more amendments if this one carries -- Would you propose anything that would prohibit somebody appointed to fill a vacancy, from running for reelection in the district courts?

DELEGATE AASHEIM: I would favor that proposal, yes, because I see the danger of this appointment as being a blank check for reelection.

CHAIRMAN GRAYBILL: All in favor of Mr. Aasheim's motion to delete the words, and district court judges, so that the governor could not appoint district court judges, say Aye.

DELEGATES: Aye.

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CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it's defeated. Now, the Chair would like to call to the attention of the body the second of my guidelines for debate this morning: Depend on the committees; follow the majority or the minority; do not become amateur draftsmen in areas you have not studied. Now, we're considering the minority report. Mr. Melvin's amendment was adopted, so it controls after line twenty-six, and section seven from lines ten to twenty-five is in effect.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would like to ask Mr. Melvin if he would yield to a question.

DELEGATE MELVIN: I yield.

DELEGATE SCHILTZ: In all fairness to Mr. Melvin, he pointed this out to me and asked me to inquire about it. If you would look at line thirteen -- all of line thirteen and a portion of fourteen -- it says, or failure of an encumbent judge to file a declaration of candidacy for a succeeding term of office. It impresses me, Mr. Melvin, that there's a possibility in this procedure where an encumbent judge would have somebody file against him, and then the encumbent judge would decide that he was not going to be a candidate, in which case the opponent would not have been screened by the committee; either that, or if he must be screened by the committee,

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he would not have the opportunity to run as your provision provides. Do you have an answer to that?

DELEGATE MELVIN: Yes, I have, Mr. Schiltz. For those that were in attendance at the Romney hearings concerning the judicial article, you will recall that this is the place where I deviated from the minority report. It does seem to me that if we're consistent in wanting to provide the voters the maximum options, that we should consider all vacancies, for instance, in the offices of supreme court judges and district court judges, -- and then skip that, and go down to, the governor of the state shall nominate. This is then covering appointments. The election procedure is left up to the voters. Does that answer your question?

DELEGATE SCHILTZ: Well, it really doesn't answer my question, and I'm not enamored enough with this proposal to take on the drafting job. I think something ought to be done to protect the fellow who files, and then has the encumbent withdraw. If there's any great magic in having everybody go through a screening committee, it seems to me that in the event that the encumbent withdraws, somebody ought to screen this fellow who wants to run against him.

CHAIRMAN GRAYBILL: Mr. Melvin, do you have an amendment to propose that would cure that?

DELEGATE MELVIN: Yes, I have one prepared, Mr. Chairman, if I may sign it.

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CHAIRMAN GRAYBILL: Very well. The sense of Mr. Melvin's amendment is to delete on lines twelve, thirteen and fourteen the clause, caused by death, resignation, removal, retirement or failure of an encumbent judge to file a declaration of candidacy for a succeeding term of office. In other words, he would strike those words from the minority proposal, so that it would read: In all vacancies in the office of supreme court justices and district court judges, the governor of the state shall nominate a supreme court or district court judge from nominees selected, etc. This has the effect of changing section seven into a clause that deals with vacancies.

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. I think that you've covered it quite thoroughly. It has the effect of simply covering the vacancies as we know them -- as the common vacancies. In answer to Mr. Schiltz's question, that if somebody wants to file for the office, he can, without going through this other procedure that regular appointees must undergo. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Melvin, I have a question. Would you yield?

DELEGATE MELVIN: Yes.

DELEGATE HOLLAND: As I indicated, there is much about your plan that I find desirous. Is it the sense of your

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amendment that -- Let's say, that Mr. Joyce is the encumbent judge. He decides not to run for reelection. Will then anybody who wants to file be able to file, and then go through the elective process? In other words, this would apply just to the vacancies -- resignations, death or things like that?

DELEGATE MELVIN: That's correct.

DELEGATE HOLLAND: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I am not sure that the amendment, as proposed by Mr. Melvin, would fit the bill. However, I am very much in favor of the amendment in the sense in which he says. I think this is a reasonable compromise for both sides. In the event of a vacancy caused by other than a man desiring not to run for office, as I understand Mr. Melvin's proposal, he would say rather than the governor filling the appointment by, just on his own, picking some lawyer to be the judge, rather than that, the commission would then recommend to the governor. The governor would then appoint from the selections of the commission. This would be confirmed by the senate, and then the man, thereafter, would be subject to election. I would submit that this matter be passed upon until the whole Judiciary Committee can go over section seven, and make sure that it says exactly what Mr. Melvin wishes it to say, and then resubmit it to the floor.

CHAIRMAN GRAYBILL: Mr. Holland, part of your sent-

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ence is out of order. The Chair will consider Mr. Melvin's present amendment. Before we close on section seven, we'll recess for lunch, but I want to get as far along as we can on section seven. If we can get over section seven, we might get judiciary out of the way today. The issue now is on Mr. Melvin's motion to strike the language, caused by the death, resignation, removal, retirement, or the failure of an encumbent judge to file. It has the effect of saying that in all vacancies in the office of supreme court or district court judges, the governor of the state shall nominate from nominees selected in the manner provided by law, etc. All in favor of Mr. Melvin's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It has been adopted.

Mr. Eskildsen. Mr. Swanberg, for what purpose do you rise?

DELEGATE SWANBERG: I was wondering, Mr. President, if it would be possible to revive my prior suggestion, or if it would be timely at this time?

CHAIRMAN GRAYBILL: Revive your plan?

DELEGATE SWANBERG: Yes.

CHAIRMAN GRAYBILL: We might just as well vote on your plan before lunch, Mr. Swanberg. Go ahead.

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DELEGATE SWANBERG: All right. The reason I asked that, Mr. President, is because we've already voted in the negative twice on the election of the district court judges. I submit, however, and will so submit again, that this is not where the problem lies. I think the public at large is pretty well satisfied with the method of selection of our district court judges. The problem does lie in the supreme court. We have before us a proposal that would call for the appointment of both bodies, and I would like to submit as a substitute to this, a proposal which I fear may not receive very much support here because it's too simple. The minority proposal as presented, is very grandly complicated. For that reason, I suppose, it will receive the support. However, I've written it out, and my proposal is simply to say that the district court judges shall be elected by the electors of the judicial district in the manner provided by law period. The supreme court justices shall be selected by a commission, which shall consist of the district judges, in the manner provided by law. I have heard much talk this morning, and I've gathered from most of these talks, that there was a considerable distrust of this commission. I, too, share that distrust. The proposal which we are submitting here, eliminates that insofar as it can be eliminated. You would have a body selected by the people at large, the entire membership of the district judges in the state. They would be not be subject to -- or would be subject

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to very little -- control by any pressure group or any person. I submit that they would be qualified, by their obvious occupation, to be fully competent to select the membership of the supreme court judges. These selections would be for a term of six years, and be reviewed from time to time as they came up. I so move, Mr. President.

CHAIRMAN GRAYBILL: Very well. Mr. Swanberg's amendment has the effect of picking up the language from what you have on the desks before you, so that it would say that the state shall be divided in judicial districts, in each of which there shall be elected by the electors, one or more district judges for the district court, whose term shall be four years. Then the second part would be his second paragraph there. The justices of the supreme court shall be appointed by a commission, which shall consist of the judges of the district court of the state of Montana. The term of office for judges of the supreme court, except as provided, shall be six years. The point of Mr. Swanberg's proposal is to have district court judges elected and the supreme court judges appointed by a commission consisting of the district court judges. So many as shall be in favor of Mr. Swanberg's proposal, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Very well, it's defeated.

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Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I move that we recess until 2:00 o'clock P. M. this afternoon.

CHAIRMAN GRAYBILL: The motion is to recess until 2:00 o'clock P.M. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

(Recess 12:58 o'clock P.M.)

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MONTANA CONSTITUTIONAL CONVENTION

THIRTY-FOURTH DAY

2:00 o'clock P.M. Convention Hall

February 29, 1972 Helena, Montana

CHAIRMAN GRAYBILL: The Convention will be in session. The Committee will be in session. Ladies and gentlemen of the Committee, placed upon your desk before you is a -- we have rewritten section seven as it is amended to date, with the exception of the bottom below the -- the part below the stars at the bottom. The way the two paragraphs at the top read is the current status of section seven, as amended. It includes both Mr. Melvin's amendments and part of the minority report. We are proceeding now to debate section seven, as amended. Mr. Melvin, I understand you have an addition.

DELEGATE MELVIN: Mr. Chairman, I move an amendment to section seven, as indicated on the bottom of the sheets that have been passed out, which reads as follows: If an incumbent judge does not run there shall be a contested non-partisan election for the office.

CHAIRMAN GRAYBILL: Very well, Mr. Melvin has moved an amendment to the existing amended language that we are discussing of section seven. That amendment is found on that sheet in your page -- on your desks at the bottom of the page. It has the effect of saying that in the event an incumbent

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judge ceases to run, then there is an election; otherwise, in all the other events, even if a judge is rejected at an election, we go back through the selection of judge process whereby the governor appoints, based on the commission.

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, the language in the amendment was suggested in response to Mr. Holland's question this morning to clarify a possible question with regard to the election. It has been suggested, Mr. Chairman and fellow Delegates, that this particular sentence might better be inserted immediately after the title, Selection of Judges. I think that this would be a matter for Style and Drafting. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion of the proposed amendment?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would move to strike the word, non-partisan, both from the added amendment and about seven lines up where it says, contested non-partisan ballot. Mr. Chairman.

CHAIRMAN GRAYBILL: I understand it to be the sense of your amendment to strike the word, non-partisan, from the last line. We are working now from the sheet that has been put on your desks -- from the last line -- and also to strike the word, non-partisan, about ten lines from the bottom at the end

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of the line. Is that correct?

DELEGATE SCHILTZ: That's correct.

CHAIRMAN GRAYBILL: All right.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I don't have a -- well, I do have a strong feeling about it -- what I mean to say is, I don't think it's been thoroughly thought of. As the Constitution -- as the present Constitution provides, it says nothing about whether elections shall be partisan or non-partisan. It's a matter of statute that we now have non-partisan elections for judges, and whether he says non-partisan or not, as the statutes now stand, it will be a non-partisan election and I think it ought to be left that way against the day when the legislature might want to change it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Schiltz's amendment to strike the word, non-partisan, from the constitutional part of the article. So many as shall be in favor of Mr. Schiltz's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and it is adopted. So, if on the sheet you have, you'll strike non-partisan in the bottom line and strike it at the end of the line, ten lines

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from the bottom. Now, the issue is on Mr. Melvin's amendment to add the last line, if an incumbent judge does not run, there shall be a contested election for the office. Is there discussion?

(No response)

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Melvin's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Very well, are there other amendments to section seven, as amended, as you have it before you?

Mr. Joyce.

DELEGATE JOYCE: May I ask Delegate Melvin a question? Will he yield?

CHAIRMAN GRAYBILL: Mr. Melvin?

DELEGATE MELVIN: I yield.

DELEGATE JOYCE: What happens, Mr. Melvin, if the incumbent judge does decide to run?

DELEGATE MELVIN: I think, Mr. Joyce, in the second paragraph it says, before the close of filings for nomination in the first primary election after senate confirmation, and so forth -- I think that this covers that eventuality.

CHAIRMAN GRAYBILL: It also covers, Mr. Joyce, and at

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every primary election prior to each succeeding term of office. So, in other words, at every primary election when his term is up, the incumbent has to put his name on the ballot and let others come on with him, or else he has to stand alone to be approved or rejected, under the second paragraph.

Mr. Joyce.

DELEGATE JOYCE: Will Delegate Melvin yield to another question?

CHAIRMAN GRAYBILL: Mr. Melvin?

DELEGATE MELVIN: I yield.

DELEGATE JOYCE: My problem is that the first paragraph talks about when there are vacancies in the office, and it seems -- the second paragraph seems to tie into vacancies -- well, and so I don't see that it is covered when the incumbent judge does decide to run.

CHAIRMAN GRAYBILL: Mr. Joyce, if the Chair may help you -- and at the primary election prior to each succeeding term of office, the name of the incumbent judge shall be placed on a contested ballot. Is that satisfactory to you?

DELEGATE JOYCE: (No audible response)

CHAIRMAN GRAYBILL: Is there other discussion of the section seven, as amended, before you on the desks?

Mr. Swanberg.

DELEGATE SWANBERG: Will Delegate Melvin yield to a question?

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DELEGATE MELVIN: I yield.

DELEGATE SWANBERG: Perhaps you could summarize for us, Mason, the difference between this proposal and the present Constitution. In what way is our present situation, under our present Constitution, different from what you propose?

DELEGATE MELVIN: Actually, the proposal before you would accommodate times when there are vacancies in the office of district court judges or supreme court judges by putting into effect the nomination of judges by the committee, then the appointment by the governor, and confirmation by the senate. The present system, of course, has been pretty well covered this morning. Now, in addition, I think that we should note in the last sentence of the second paragraph -- in the event of rejection of a judge, another selection and nomination shall be made in like manner. In other words, if a judge is running for approval or rejection at the general election, if he is rejected, then the nomination procedure would go into effect and then he would have to run at the next primary election coming up. Does that answer your question, Mr. Swanberg?

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Well, I must have been out late last night because I'm not quite able to understand why we start filling vacancies before we decide how the judges are to be elected. Now, is the election determined -- beginning line twenty-six on forty-two? Will Mr. Berg yield to that question?

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CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE AASHEIM: Where do we talk about election of judges?

DELEGATE BERG: The proposal is -- combines appointments and elections. If a judge is -- if a vacancy occurs, for example, by death or resignation or retirement, then -- and the governor is required to make an appointment to fill that vacancy, in that event a system of, call it merit selection, is used. Now, any judge who is in office will be required to be retained in office for approval or rejection. At any election, he must stand a competitive election if anyone wants to file against him. Now, that's clearly expressed in paragraph two of this section seven as you have it before you. There is the amendment that Mr. Melvin is proposing which fills in a possible gap and that provides that if an incumbent judge does not run, there shall nevertheless be a contested election for his office, so that in the event of the rejection of a judge, or in the event the judge does not seek to succeed himself, then, nevertheless, there is a contested election, and in the event that he does not care to succeed himself, the merit selection feature -- the appointment feature -- would not obtain. Do I answer your question?

DELEGATE AASHEIM: Mr. President, I still feel that the -- that we're putting the cart before the horse here and I think you have explained it to me what you have done, but I

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think the important process is the primary election of judges, and then if there's a vacancy, then it should be -- then it should follow.

DELEGATE BERG: The only way I can answer you is to say that these two paragraphs take care of both problems completely.

CHAIRMAN GRAYBILL: Mr. Aasheim, as was said a while ago, whether or not this last sentence should be first or whether it should be last is a matter that Style and Drafting could decide on, but the last sentence does take care of it.

Mr. Swanberg.

DELEGATE SWANBERG: Would Delegate Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE SWANBERG: Mr. Berg, I don't wish to seem dense about this, but I fail to find anyplace in here where there's a merit system mentioned.

DELEGATE BERG: Well, in all vacancies -- if you'll read the first paragraph -- in all vacancies in the offices of supreme court justices and district court judges, the governor of the state shall nominate a supreme court or district court judge from nominees selected in the manner provided by law. Now, that means that he must make his selection from nominees in the manner provided by law. It is contemplated that the

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legislature will create a committee to select and name those nominees. That's where merit selection comes in.

DELEGATE SWANBERG: But it's not so stated in our Constitution?

DELEGATE BERG: No, because it was not stated for the very reason that if we locked it into the Constitution and the composition of the committee needed changing, it's difficult to do it by amendment. If you leave it to the legislature and it needs changing, it can readily be done year by year.

DELEGATE SWANBERG: Under the situation that we have in the Constitution, though, if the legislature decided not to form this commission, then we'd have the same situation we have now, would we not, where the governor would simply appoint the judge?

DELEGATE BERG: Yes, but I think this is a pretty clear direction to the legislature of the intent of this Convention.

CHAIRMAN GRAYBILL: Mr. Swanberg, do you have any further questions?

DELEGATE SWANBERG: (No audible response. Microphone not turned on.)

CHAIRMAN GRAYBILL: Very well, the question arises on section seven, as amended. Section seven, as amended, now includes part of the minority report on page forty-two and it is best seen by looking at the sheet which is placed on your desk.

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The first paragraph, under selection of judges: In all vacancies in the offices of supreme court justices and district court judges, the governor of the state shall nominate a supreme court or district court judge from nominees selected in the manner provided by law. If the governor fails to nominate within thirty days after receipt of the names of the nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not assembled shall be effective as an appointment until the end of the next session of the senate. If the nomination is not confirmed by the senate the office shall be vacant and another selection and nomination shall be made. That paragraph is from the minority report with one clause deleted. Then, Mr. Melvin's first amendment was: Before the close of filings for nominations in the first primary election after senate confirmation, and at the primary election prior to each succeeding term of office, the name of the incumbent judge shall be placed on a contested ballot if other candidates have filed for election to that office. If there is no primary election contest for the office, the name of the incumbent judge shall be nevertheless be placed on a ballot in the general election allowing voters of the state or district the choice of his approval or rejection. In the event of rejection of a judge another selection and nomination shall be made in like manner. Namely, the governor would appoint

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up in the first paragraph. Now, we've also added Mr. Melvin's second amendment -- third amendment: If an incumbent judge does not run, there shall be a contested election for the office. The vote on this, I trust, will be by roll call. The ballot is open. So many as favor the minority-Melvin proposal, as amended, to section seven of the judicial article, please vote Aye. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the ballot is closed. Please tally the ballot.

Aasheim	-	Aye	Berg	-	Aye
Anderson, J.	-	Aye	Berthelson	-	Aye
Anderson, O.	-	Absent	Blaylock	-	Aye
Arbanas	-	Aye	Blend	-	Aye
Arness	-	Aye	Bowman	-	Aye
Aronow	-	Aye	Brazier	-	Aye
Artz	-	Aye	Brown	-	Aye
Ask	-	Aye	Bugbee	-	Aye
Babcock	-	Aye	Burkhardt	-	Aye
Barnard	-	Aye	Cain	-	Aye
Bates	-	Aye	Campbell	-	Aye
Belcher	-	Aye	Cate	-	Absent

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1	Champoux	-	Aye	Heliker	-	Absent
2	Choate	-	Aye	Hollnad	-	Aye
3	Conover	-	Aye	Jacobsen	-	Aye
4	Cross	-	Aye	James	-	Aye
5	Dahood	-	Aye	Johnson	-	Aye
6	Davis	-	Absent	Joyce	-	Aye
7	Delaney	-	Aye	Kamhoot	-	Aye
8	Driscoll	-	Absent	Kelleher	-	Absent
9	Drum	-	Absent	Leuthold	-	Aye
10	Eck	-	Aye	Loendorf	-	Aye
11	Erdmann	-	Aye	Lorello	-	Aye
12	Eskildsen	-	Absent	Mahoney	-	Aye
13	Etchart	-	Aye	Mansfield	-	Aye
14	Felt	-	Absent	Martin	-	Aye
15	Foster	-	Aye	McCarvel	-	Aye
16	Furlong	-	Absent	McDonough	-	Aye
17	Garlington	-	Aye	McKeon	-	Aye
18	Gysler	-	Aye	McNeil	-	Aye
19	Habedank	-	Aye	Melvin	-	Aye
20	Hanson, R. S.	-	Aye	Monroe	-	Aye
21	Hanson, R.	-	Aye	Murray	-	Aye
22	Harbaugh	-	Aye	Noble	-	Aye
23	Harlow	-	Aye	Nutting	-	Aye
24	Harper	-	Aye	Payne	-	Aye
25	Harrington	-	Aye	Pemberton	-	Aye

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Rebal	-	Absent	Speer	-	Aye
Reichert	-	Aye	Studer	-	Aye
Robinson	-	Aye	Sullivan	-	Aye
Roeder	-	Aye	Swanberg	-	Aye
Rollins	-	Aye	Toole	-	Absent
Romney	-	Aye	Van Buskirk	-	Aye
Rygg	-	Aye	Vermillion	-	Aye
Scanlin	-	Aye	Wagner	-	Aye
Schiltz	-	Aye	Ward	-	Aye
Siderius	-	Aye	Warden	-	Aye
Simon	-	Aye	Wilson	-	Aye
Skari	-	Aye	Woodmansey	-	Aye
Sparks	-	Aye	Mr. Chairman	-	Aye

CLERK HANSON: Mr. Chairman, eighty-eight Delegates voting Aye, no Delegates voting No..

CHAIRMAN GRAYBILL: Eighty-eight Delegates having voted Aye, section seven is adopted. Now, the Clerk will again read section six, which we passed.

CLERK HANSON: (Reading) Section six, Terms and Pay of Judges: Justices of the supreme court, district court judges and other judges shall be paid as provided by law, but their salary shall not be diminished during their term of office. Terms of office for supreme court justices shall be six years. Terms of office for district court judges shall be four years. Terms of office for other judges shall be provided by law.

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(End reading) Mr. Chairman, section six.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I believe I have already moved and explained this section. I'll have no more comments.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I would like to propose an amendment to paragraph six to the effect of increasing the term of supreme court justice from six years to eight and district judges from four years to six. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Garlington, I understand you want to increase the supreme court from six to eight and the district court from four to six, is that right?

DELEGATE GARLINGTON: Yes, that is correct.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Ladies and gentlemen of the Convention, as you review section seven which we have just voted upon here, you realize that we have not really made any great change or improvement in the situation of those who might aspire to serve in judicial office, and I get concerned again with the fact that it really is difficult to get people to give up their private practice, forsake all of their connections in order to ascend to the bench, and then face the uncertainties of a political confrontation thereafter. In order to determine whether I was right about this, I got to looking through the

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book on the judiciary, number fourteen, which you all were given, and especially I was looking at the tables which appear on page one ninety-three and one-ninety-nine in that volume. From this, I find that Montana is really at the bottom of the barrel in the way that it treats its judges, and I feel that this is an issue that ought to be called to the attention of the Delegates in order to complete our handling of this judicial article. For example, in the table number sixteen on pages one ninety-two and three, it appears that there are seventeen out of the fifty states who have supreme court justice terms limited to six years. All thirty-three of the other states have them from eight years up to fifteen years, or for life. So, we are one of six who -- one of seventeen who have six year limited term. Turning to the district court, I find that thirteen out of the fifty states have trial court judge terms fixed at the minimum of four years and all thirty-seven have longer terms, running from six to fifteen years and on up to life. Then, I thought to myself, well, maybe we pay our judges well enough that it is worthwhile to give then only a short term, so looking at table seventeen on page one ninety-nine, I checked the pay provided for the judges against the terms that matched the terms in Montana, and I find in conclusion that the only state in the nation that has a lesser salary than we have for our supreme court justices on the same term as we have is South Dakota, and it either -- well, anyway, it

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is five hundred dollars below Montana. So, the result is that Montana at the present time has a combination of the shortest term and the lowest salary, except in one instance, of all the states in the nation for its supreme court justices. And I think this is something we ought to consider because if we ask these men to give up their private practice and go into judicial service, we either ought to make it attractive to them in some respect by the salary they receive or by the term of office they have in which to establish their judicial competence. For this reason, I suggest that if we increase the terms of both supreme court justices and district court judges by two years, we will still be on the under half of the American national standard and we will take one step that will not cost anybody anything to see to it that those who aspire to the judicial service will have a fair term within which to serve without the necessity of preparing to finance for their political campaigns.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Garlington, yield, please?

DELEGATE GARLINGTON: I yield.

DELEGATE SCHILTZ: Mr. Garlington, do you think it is necessary here -- at least I would like to have the sense of this committee to know when these terms would start, if your amendment were approved.

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DELEGATE GARLINGTON: Well, Mr. Schiltz, I haven't given any consideration to that. I assume that in our transition from the old to the new, assuming that we are cleared by the voters, that the new terms would commence as the old terms expire.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, I rise in support of Mr. Garlington's amendment. I believe that if we are going to ask these men to run, and as he has pointed out, this business of giving up their law practice, that if we extend the terms to six years for district judges and eight years for the supreme court justices, that this would not be unreasonable. I would have one small comment on the pay for judges. I understand they draw twenty thousand five hundred dollars a year and this seems to be -- they seem to think this is a very small amount. I would like to say that, as a school teacher, I would like to go through the pain of adjusting to a twenty thousand five hundred dollar a year salary.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I'll be brief. I, too, rise in support of Mr. Garlington's motion. I feel that what our real endeavor here is, is to make an effort such as we can to improve the course of justice in Montana and I think the one great stride that may be made in that effort is to seek better judges, to try to get at least the best of our bar

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interested and induced to become judges. One way to do that is, of course, to extend their term and to extend it so it is at least equal or on par with the surrounding states and generally with the states in the Union.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I support Delegate Garlington's motion for the reason that I think it will improve the quality of justice. I think the longer the term, the more stable the term, the more stable the performance, the chance of external influence is lessened, so, consequently, I support that in the hope that in this manner we will improve the quality of justice in Montana.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I've come to the conclusion that the best way to get action in the judicial article is to resist the other attorneys, so I'm going to do so. I suggest that now we've gone from direct election to merit selection, at least in part. An integral part of merit selection is the review--that is, the man running uncontested, even if he doesn't have an opponent, is going to come up here and the voters are going to vote whether he's doing a good job or not, and I would suspect that a good deal of our elections in the future are going to be that way. Now, lowering these terms means that the public won't even be able to say to these judges that you're not doing a good job except every eight years

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and every six years in terms of the district court -- six years; in terms of the supreme court, eight years. And I suggest that as long as we've gone to this system, and we might as well be good sports because this is evidently what the majority wants, we're going to have this system, that we should at least call these men to the mark as often as we have been doing it -- call the supreme court up every six years and the district court every four years.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Garlington's amendment. He would amend section six on page forty-two on lines five and seven to provide the supreme court judges with eight year terms and the district court judges six year terms. So many as shall be--

Mr. Heliker.

DELEGATE HELIKER: Roll call.

CHAIRMAN GRAYBILL: Roll call? Very well, so many -- we'll use the voting machine. So many as shall be in favor of the amendment will vote Aye. So many as shall be opposed will vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, close the ballot. Please take the ballot.

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1	Aasheim	-	Nay	Choate	-	Aye
2	Anderson, J.	-	Nay	Conover	-	Aye
3	Anderson, O.	-	Absent	Cross	-	Aye
4	Arbanas	-	Aye	Dahood	-	Aye
5	Arness	-	Absent	Davis	-	Nay
6	Aronow	-	Nay	Delaney	-	Nay
7	Artz	-	Nay	Driscoll	-	Nay
8	Ask	-	Nay	Drum	-	Nay
9	Babcock	-	Nay	Eck	-	Aye
10	Barnard	-	Nay	Erdmann	-	Nay
11	Bates	-	Nay	Eskildsen	-	Nay
12	Belcher	-	Nay	Etchart	-	Nay
13	Berg	-	Aye	Felt	-	Absent
14	Berthelson	-	Aye	Foster	-	Aye
15	Blaylock	-	Aye	Furlong	-	Aye
16	Blend	-	Aye	Garlington	-	Aye
17	Bowman	-	Aye	Gysler	-	Nay
18	Brazier	-	Nay	Habedank	-	Aye
19	Brown	-	Aye	Hanson, R. S.	-	Nay
20	Bugbee	-	Aye	Hanson, R.	-	Nay
21	Burkhardt	-	Aye	Harbaugh	-	Nay
22	Cain	-	Aye	Harlow	-	Nay
23	Campbell	-	Aye	Harper	-	Aye
24	Cate	-	Absent	Harrington	-	Nay
25	Champoux	-	Nay	Heliker	-	Nay

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1	Holland	-	Nay	Reichert	-	Aye
2	Jacobsen	-	Nay	Robinson	-	Aye
3	James	-	Aye	Roeder	-	Absent
4	Johnson	-	Aye	Rollins	-	Aye
5	Joyce	-	Aye	Romney	-	Nay
6	Kamhoot	-	Nay	Rygg	-	Aye
7	Kelleher	-	Absent	Scanlin	-	Nay
8	Leuthold	-	Nay	Schiltz	-	Nay
9	Loendorf	-	Aye	Siderius	-	Aye
10	Lorello	-	Nay	Simon	-	Aye
11	Mahoney	-	Nay	Skari	-	Aye
12	Mansfield	-	Nay	Sparks	-	Aye
13	Martin	-	Aye	Speer	-	Aye
14	McCarvel	-	Nay	Studer	-	Aye
15	McDonough	-	Aye	Sullivan	-	Nay
16	McKeon	-	Nay	Swanberg	-	Nay
17	McNeil	-	Nay	Toole	-	Absent
18	Melvin	-	Aye	Van Buskirk	-	Aye
19	Monroe	-	Nay	Vermillion	-	Nay
20	Murray	-	Aye	Wagner	-	Aye
21	Noble	-	Aye	Ward	-	Aye
22	Nutting	-	Nay	Warden	-	Nay
23	Payne	-	Aye	Wilson	-	Aye
24	Pemberton	-	Aye	Woodmansey	-	Nay
25	Rebal	-	Absent	Mr. Chairman	-	Nay

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CLERK SMITH: Mr. President, forty-six voting Aye, forty-six voting Nay.

CHAIRMAN GRAYBILL: Forty-six having voted on each side of the proposition, the proposition fails. We are now debating section six as it appears in the minority report. Very well, members of the committee, you now have before you on the motion of Mr. Berg that when this committee does rise and report after having under consideration section six, it recommend the same be adopted.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Do I not have an amendment up there?

CHAIRMAN GRAYBILL: I beg your pardon. You do, yes, sir. Do you want it read?

DELEGATE ROMNEY: Please.

CHAIRMAN GRAYBILL: Very well.

CLERK SMITH: (Reading) Mr. Chairman, I move to amend section six, page forty-two, line three, of the judiciary committee minority report by adding the following language: No justice of the supreme court nor judge of the district court shall accept or receive any compensation, fee, allowance, mileage, perquisite, or --

CHAIRMAN GRAYBILL: Emolument.

CLERK SMITH: -- emolument for or on account of his

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office in any form whatever except as provided by law. Signed Romney. (End reading)

CHAIRMAN GRAYBILL: The sense of Mr. Romney's amendment would be to add at the end of the sentence that ends on line three of page forty-two the following sentence: No justice of the supreme court nor judge of the district court shall accept or receive any compensation, fee, allowance, mileage, perquisite or emolument for or on account of his office in any form whatever except as provided by law.

Mr. Romney.

DELEGATE ROMNEY: (Inaudible. Microphone not turned on.)

CHAIRMAN GRAYBILL: We can't hear you, Mr. Romney. Hold it a little closer.

DELEGATE ROMNEY: It is practically the same as section thirty in the contemporary Constitution. The only difference is in the last line where it reads, except -- in the old Constitution -- in the present Constitution where it reads, except the salary provided by law. My amendment is, except as provided by law. The purpose of this amendment, of course, is perfectly plain. It's to forestall any additional perquisites or emoluments accruing to a member of the judiciary for things other than his salary. The reason I did not include the word, salary, is because I concede it is included in except as provided by law, because the salary is provided by law by the

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legislature. So are items other than the salary, which might include, for example, mileage. Now, it's correct that a man should -- a judge who must travel from Hamilton to Thompson Falls or from Kalispell to Miles City, or wherever it might be, should be compensated for the money that he expends for mileage and his hotel and things like that. That could and would be taken care of by the legislature, except as provided by law, in the same way the legislature cares for similar contingencies of other employees of the state. For example, the members of this Convention receive per diem in addition to their salaries and they receive a certain amount of mileage. So do legislators. Employees of the various departments of the state likewise are compensated for their travel, and that could all be handled by the legislature. Now, I think that's the way it should be. I don't see why the judiciary should be treated in a different manner than the other employees of the people of the state of Montana. If you do otherwise, it is tantamount to an increase in salary and the legislature has already taken care of the salary increase, so I just want the judiciary to be in the same standing as the rest of the employees of the state of Montana. Thank you.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, would Mr. Romney yield to a question?

CHAIRMAN GRAYBILL: Mr. Romney, will you yield?

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DELEGATE ROMNEY: Certainly.

DELEGATE LOENDORF: Mr. Romney, your amendment was only read but I am wondering if it's really different from the second paragraph of section eight which reads: No supreme court justice or district court judge shall solicit or receive any compensation on account of his office in any form whatever except salary and actual necessary travel expenses as provided by law.

DELEGATE ROMNEY: That's quite true but it's in the wrong place, I think.

CHAIRMAN GRAYBILL: Where is that, Mr. Loendorf?

DELEGATE LOENDORF: Mr. President, that's in the second paragraph of section eight.

CHAIRMAN GRAYBILL: Very well, Mr. Romney, we are coming to that. Do you want to amend it here, or do you want to --

DELEGATE ROMNEY: Well, Mr. Chairman, I submit that this is where the rest of the qualifications are spelled out. I don't care, as long as it gets in.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, the committee, both in the Judiciary Committee and I think in both the majority and the minority, gave serious consideration to this problem and we used the term, actual necessary travel expense, for very good reason and that is, we found that district judges in var-

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ious communities have an entirely different expense than they do in others. Some travel more, some have more expense because motel rates and hotel rates in some communities are higher, and we felt that we should try to equalize this out as nearly as we could and we therefore specifically used and agreed upon the language, and necessary travel expense. Now, I would call -- as long as we are into section eight, I would call your attention to the next paragraph which relates to similar limitations on judges, and that is this: Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party. Now, it is the feeling of at least the minority and I believe the majority, too, joins with us in that we did not want judges to receive any fee, any salary, any compensation from any other employment except as a judge. This is different than the Constitution and this is why we inserted it. Now, it seemed to us that these two paragraphs related more to limitations and qualifications and we therefore included them under section eight rather than under the salary and term.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: It is satisfactory to me and I withdraw my amendment.

CHAIRMAN GRAYBILL: All right, Mr. Romney withdraws

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his amendment. Very well, members of the committee, you now have before you, on the motion of -- I should perhaps mention that Mr. Kelleher had an amendment to eliminate the terms of all of the three officers, all three of those things, but he's not here to put his motion so I'm not going to put it. Members of the committee, you now have before you on the motion of the chairman of the committee, or the sub-chairman of the Committee on Judiciary, that when this committee does rise and report, after having under consideration section six, that it recommend the same be adopted. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Six is adopted. Will the Clerk please read section eight?

CLERK SMITH: (Reading) Section Eight. Qualifications and Limitations of Judges. No person shall be eligible to the offices of justice of the supreme court or judge of the district court unless he or she shall have been admitted to the practice of law in Montana for at least five years prior to the date of appointment or election, is a citizen of the United States, and has resided in the state of Montana two years immediately before taking office. Qualifications and methods of selection of judges of other courts shall be provided by law. No supreme court justice or district court judge shall solicit

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or receive any compensation on account of his office, in any form whatever, except salary and actual necessary travel expense as provided by law. Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party. Filing for another elective public office results in forfeiture of judicial position. A district judge must reside in his district during his term of office. (End reading) Section eight, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that when this committee does rise and report, after having under consideration section eight of the minority report, as it appears on page forty-three and forty-four, that it approve and give it do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: We have changed the 1889 Constitution in some particulars with regard to the qualification of judges. First of all, we eliminated the age requirement but, secondly, we required five years practice of law for either a district court judge or a supreme court judge, and by that we mean that he must be admitted to the practice of law in the state of Montana for at least five years before he is qualified to hold that office. It was the belief of the committee,

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and I'm sure I'm speaking now on behalf of both majority and minority, that it takes experience in the court room, it takes experience in the actual practice in Montana in order to understand the procedures that we use, and that it would be harmful to the carrying out of justice in our courts if we had people on the bench who were not intimately familiar, not only with Montana substantive law, but more especially with procedural law and we felt very strongly that one of the most significant qualifications would be actual trial practice in court. We did not feel, however, that we should specify that in particular but we feel that these are the kind of qualifications that do lend to the making of good judges. We did not make any qualifications insofar as inferior court judges were concerned but left that entirely to the legislature. I have already discussed paragraphs two and three. The Constitution does not now have a provision which prohibits a justice of the supreme court or judge of the district court from filing for any other office during his term of office. This was inserted in the minority report to prevent what we think is political ambition and using the courts as stepping stones in fulfillment of a political ambition. We provided that the district judge must reside within his district during his term of office. That is exactly the same as the old -- the 1889 Constitution.

CHAIRMAN GRAYBILL: Mr. Berg, the Chair is in doubt. The other day there was a proposal here that the Judiciary

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on page forty-four at the end of the article -- language about if a judicial officer absented himself from the state for sixty consecutive days. Do you want that in or not?

DELEGATE BERG: (Inaudible. Microphone not turned on.) --propose that as an amendment because that is, I think, section thirty-seven of the existing Constitution and I recall Judge Fall, in particular, before our committee emphasizing the importance of that. We would like it included.

CHAIRMAN GRAYBILL: You want it in?

DELEGATE BERG: Yes, and I so move.

CHAIRMAN GRAYBILL: All right. First of all, then, on page forty-four, at the top of the line where it says, one, for his term of office -- it's the end of section eight -- the committee wishes to add this language and you have had this language on your desk for some days. It may be lost by now. Any judicial officer who may absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office. All in favor of the Judiciary Committee's motion that that be added, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted.

Now, Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, we have another amend-

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ment that the committee agreed upon yesterday afternoon.

CHAIRMAN GRAYBILL: Mr. Aronow, would you like the Chair -- or the Clerk to read that amendment?

DELEGATE ARONOW: Yes, I would, except there is one error that has to be added to this amendment, and that is to strike the line at the bottom of page forty-three, line three-oh, and line one at the top of page forty-four because the amendment takes care of that.

CHAIRMAN GRAYBILL: Very well, will the Clerk please read the amendment?

CLERK SMITH: (Reading) Mr. Chairman, I move to amend section eight, page forty-four, line --

CHAIRMAN GRAYBILL: Line one.

CLERK SMITH: -- line one, by adding the following language to that section: All judges, except justices of the supreme court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town in which they may be elected or appointed. Signed, Aronow. (End reading)

CHAIRMAN GRAYBILL: Very well, Mr. Aronow's amendment has the effect of changing the language there. We strike out the phrase: A district judge may reside in his district during his term of office -- or, must reside in his district during his term of office -- and put it in in this more comprehensive language, that all of the judges, except the supreme

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court judges who reside in the state shall respectively reside during their term of office in the district, county, and so forth, from which they may be elected or appointed.

Mr. Aronow.

DELEGATE ARONOW: I move the adoption of this amendment. This is nothing new. It has been in the 1889 Constitution. It's always been the law in Montana. We've boiled it down, shortened it, and submit it herewith.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I simply want to point out that this amendment does cover, for example, police court judges or justices of the peace or any other inferior court judge, and it was the thinking of our committee that if a police court judge is either elected or, in the case of a commission-management form of government, appointed, he ought at least to live within the area where the taxpayers are paying his salary.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Aronow's amendment to the effect that judges, except supreme court judges, shall reside within the state and the district in which they serve. All in favor of Mr. Aronow's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: (No audible response)

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CHAIRMAN GRAYBILL: It's adopted.

Mr. Blaylock.

DELEGATE BLAYLOCK: Will Mr. Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: Yes.

DELEGATE BLAYLOCK: Mr. Berg, just the second paragraph up from the bottom of page forty-three, at line twenty-eight, it says: Filing for another elective public office results in forfeiture of judicial position. Now, it says public office there. I just want to raise a question. If a district judge were to file for a supreme court position, would he forfeit his district judge position?

DELEGATE BERG: He would, under this provision, yes.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Would Mr. Berg yield?

DELEGATE BERG: Yes.

DELEGATE ARONOW: Suppose the chief justice, as an example, term expired and he didn't even file. I'll just make it real easy. So one of the associate justices, whose term has not expired, filed for the position --

DELEGATE BERG: He would forfeit his office and take his chances in the election.

DELEGATE ARONOW: Thank you.

CHAIRMAN GRAYBILL: Members of the committee, you

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have before you, on the motion of Mr. Berg, that when this committee does arise and report, after having under consideration section eight, it recommend that the same be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Section eight is adopted. Will the Clerk please read section nine?

CLERK SMITH: (Reading) Section Nine. Disqualification of Judges. The legislature shall provide for disqualification of judges at any one or all of the inferior, trial and appellate court levels. (End reading) Section nine, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz, do you have section nine?

DELEGATE SCHILTZ: I don't have it, but I'll take a shot at it.

CHAIRMAN GRAYBILL: Mr. Berg will take it, Mr. Schiltz. Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that when this committee does arise and report after having under consideration section nine that it repeal the same. Now, yesterday, at our so-called ad hoc committee meeting, we discussed this at length, particularly as it related to the supreme court,

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and we had the benefit of, in our committee -- this so-called ad hoc committee -- members who had been in discussion with the supreme court and the possible effect it might have on the operation of the supreme court, and it was felt that it should be left entirely to the legislature and not referred to in the Constitution; that if you permit unlimited, at least, disqualifications in the supreme court you might very well disrupt or almost completely dismantle the court at times. So, it was suggested by the supreme court itself, as I understood it, that if there were disqualifications of supreme court members, it should be at least for cause. And because of these problems, the committee that met yesterday, which was composed of both minority and majority lawyers, felt that this should be deleted, and I understood Mr. Schiltz would move it but I'll be happy to if he doesn't.

CHAIRMAN GRAYBILL: Very well. Now, the sense -- for the information of the body, the sense of Mr. Berg's motion is to delete section nine. In other words, strike it out, do away with it. Is there debate?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you the motion of Mr. Berg that when this committee does arise and report, after having under consideration section nine, that it be deleted. So many as are in favor of that motion, say Aye.

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DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Section nine is deleted. Will the Clerk read section ten?

CLERK SMITH: (Reading) Section Ten. Removal and Discipline of Judges and Lawyers. There is created a judicial standards commission consisting of three judges, selected by the district judges, of which not more than one can be a member of the supreme court, two members of the Montana bar, and two citizens who do not hold any public office of the state of Montana or any office of a political party, appointed by the governor. Each vacancy on the commission shall be filled in the same manner as the original appointment was made and the appointee shall serve for the remainder of the term vacated. No act of the commission is valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairman. Its proceedings shall be confidential. The commission shall have the power to investigate, including power to subpoena witnesses and documents, upon complaint by any citizen or on its own motion, charges which could be the basis for retirement, censure or removal of any justice or judge or for the discipline, censure, suspension or disbarment of any practicing lawyer in the state of Montana. Upon finding charges to be well founded, the commis-

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sion shall file a formal complaint before the supreme court. The supreme court shall hear such complaint, and if it be sustained may retire, censure or remove any justice or judge or discipline, censure, suspend or disbar any practicing lawyer. If the complaint be against a justice, the court shall call in a district judge as provided in section three of this article. (End reading) Section ten, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, well, the Clerk has an amendment to section ten which, in effect, has deleted and completely rewritten it.

CHAIRMAN GRAYBILL: I'll have the Clerk please read the amendment proposed by Mr. Aronow's section ten.

CLERK SMITH: (Reading) Mr. Chairman, I move to amend section ten, page forty-four, lines five through thirty, and page forty-five, lines one and two, of the Judicial Committee proposal by striking the entire section and inserting in lieu thereof the following language: Section Ten. Removal and Discipline of Judges. Subsection One: The legislature shall create a judicial standards commission and provide for the appointment of three district judges, one attorney, and one citizen who is neither a judge nor an attorney. Subsection Two: The commission shall investigate complaints, subpoena witnesses and documents, and make rules implementing this section and providing for confidentiality of proceedings. Sub-

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section Three: Upon recommendation of the commission, the supreme court may: (a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or (b) Censure, suspend or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance. Signed, Aronow. (End reading)

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I move that when this committee does arise to report that it adopt this amendment. The reason we determined to rewrite this, there were some defects, we felt, in the section ten of the minority proposal. It was a little too broad in scope. It attempted to cover the discipline of lawyers, which was not the intent of this article, and the discipline of lawyers and the standards for their conduct is handled by the supreme court. This is a committee which we created in the majority part of the committee report, modeled somewhat after New Mexico. It has been revised; some things have been taken out of California. It's shortened, and in effect, this article provides for three district judges, one lawyer and one layman, a committee of five, to investigate and look into any complaints that are made or any information that comes to the attention of the commission that a judge, either because of old age, other disability, is not attending to duties properly and provide for his retirement or removal

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from office. The present time, the only procedure provided in the Constitution is impeachment, which is a cumbersome and difficult method. We feel this will help upgrade and strengthen the judiciary and take care of those situations where, perhaps because of injuries or other disability, a judge may not realize that he is incapacitated, and this can be handled quietly in many instances and without any undue embarrassment to anyone or the system. If the judge or justice refuses to cooperate and wants a hearing, there's a form provided. We didn't feel that as long as the supreme court was to finally pass on this matter that any member of the supreme court should be on the committee to investigate the charges. Thank you.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I rise to make a substitute motion.

CHAIRMAN GRAYBILL: All right, what is your substitute motion?

DELEGATE McNEIL: The language has basically been spread upon the desks, although it was drafted in the form of an amendment to the section as proposed by the minority committee report. My substitute motion will read exactly as section ten, as read by Delegate Aronow, excepting in the title, following the word, judges, insert the following: Architects--

CHAIRMAN GRAYBILL: Just a minute, Mr. McNeil. Does the Chair understand that you are now intending -- rather than

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what you said -- you are now intending to amend Mr. Aronow's amendment?

DELEGATE McNEIL: No, sir. Since an amendment to a second amendment, I believe, would be out of order, I am offering a substitute motion.

CHAIRMAN GRAYBILL: No, an amendment to an amendment is not out of order but my point is, do you want it grafted onto Mr. Aronow's or the minority report?

DELEGATE McNEIL: At this time, Mr. Chairman, I would -- if an amendment is in order, I will amend Delegate Aronow's amendment.

CHAIRMAN GRAYBILL: All right, will the Clerk read the substance of Mr. McNeil's amendment -- not what it amends but just the substance of it. Just the first paragraph.

CLERK SMITH: (Reading) Architects, bankers, priests, governors, legislators, certified public accountants, insurance agents, doctors, dentists, teachers, ministers, professors, pilots, educators, businessmen, engineers, social service workers, journalists, veterinarians, and all other professions. (End reading)

CHAIRMAN GRAYBILL: All right, now, the sense of Mr. McNeil's motion is to amend the title of Mr. Aronow's proposal here to include all of the groups that you heard mentioned. I take it that he would then have this judicial standards commission, consisting of three district judges, an at-

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torney and one citizen who is not a judge nor an attorney investigate complaints, and upon recommendation, he would have the supreme court do away with all of the incompetent people in these different capacities. Is that correct, Mr. McNeil?

DELEGATE McNEIL: Mr. Chairman, that is substantially correct. I trust that the Delegates will recognize the list since it was taken from the membership of this Convention, with the governors and legislators thrown in. I would also have included housewives and ranchers had I known how they could have been removed.

(Laughter)

DELEGATE McNEIL: I did not intend this to be humorous, although, rather obviously, it is. The legal profession has been singled out for censure. I do not believe this belongs in the Constitution. If each of you will think of your own profession, I think that you can find a small percentage, perhaps the same percentage as that of the legal profession, that needs cleaning up and attention. I made this motion to draw your attention to that fact and to request that you give serious consideration to removing this kind of thing from the Constitution. For that reason, I will withdraw my motion and make the following substitute motion. I move to delete section ten in its entirety, as a substitute motion.

CHAIRMAN GRAYBILL: Very well, the motion is to delete section ten.

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DELEGATE McNEIL: Mr. Chairman, I will speak just for one minute on this subject.

CHAIRMAN GRAYBILL: All right.

DELEGATE McNEIL: Our present Constitution, and I trust the format which all of the Delegates are contemplating for the one which we are drafting now, contemplates three equal, distinct, separate branches of government. We have adopted an executive article which does not have any appointive commission overseeing our executive officers. We have adopted a legislative article which does not have any appointive commission overseeing our legislators. I submit that the judiciary of this state, which is as fine as there is anywhere, does not need an appointive commissión overseeing it. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue --

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, in response to Mr. Mr. McNeil's motion, I resist it, partially because and mostly because we have had two or three judges in the state of Montana who, themselves, were not aware that they were over the hill and the judges who testified at our committee themselves, speaking for the entire judges' association, said that they were for something like this. They catch the burden of a judge who is too old and has possibly become senile -- once in a while we have one who is alcoholic -- and then they catch that extra burden of work and the judiciary also is criticized consider-

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ably when that situation obtains. For that reason, I resist the motion.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, Mr. McNeil put in his first motion, which he then withdrew, and he included teachers and I would like to make one point in regard to that, that --

CHAIRMAN GRAYBILL: All right, now, it's out of order unless it has to do --

DELEGATE BLAYLOCK. It does --

CHAIRMAN GRAYBILL: -- with deleting the paragraph --

DELEGATE BLAYLOCK: -- it does, Mr. President.

CHAIRMAN GRAYBILL: Pardon?

DELEGATE BLAYLOCK: It does have something to do with it. That if, in removing people, that teachers must go before a board if they are going to remove their teacher's certificate which, in effect, would be the same as disbarring an attorney or removing a judge. And we don't even have, on such a committee as that, a teacher sitting there as this present amendment which they want to delete, where we have judges and lawyers sitting, and I would resist Mr. McNeil's motion to delete this. I think we need this in our Constitution in case that we very well may have to judge a judge.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I rise in support of

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Delegate Aronow's proposal and resist Mr. McNeil's proposal to eliminate that particular sentence, and I would like to quote briefly from a comment that was made in one of the letters that an attorney wrote to the committee: Recall the case of Judge in blank and blank and blank counties some time ago. He refused to hold jury trials and the governor and the supreme court were powerless to do anything about it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. McNeil's substitute motion to delete section ten in its entirety. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The motion fails.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I have sensed that a lot of laymen in this Convention feel nothing is done, practically, in regard to lawyers and before they vote on Mr. Aronow's amendment, which I support, I wonder if Mr. Davis would yield to a question?

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE DAVIS: I'll yield.

DELEGATE HABEDANK: Mr. Davis, you are a member of the supreme court commission on practice. Would you explain what this does?

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DELEGATE DAVIS: Well, I was hoping the amendment would pass. It's a little difficult to explain without taking a little time. The supreme court commission on practice is made up of eight members of the bar who are elected in each of eight districts. The junior judge -- junior by length of service, not age, because our eighty year old judge happens to be the junior judge in our eight county district now for this purpose -- holds the election. They submit, as I understand it, the two highest candidates to the supreme court, the ones getting the most votes. The supreme court then nominates or appoints one of them to the commission on practice. At the present time there are eight attorneys on the commission. Mr. Ask is on it from Roundup, I'm on it from southwestern Montana. There's one from Great Falls, Missoula, Glasgow and Sidney, and Mr. Hooks from Townsend. Complaints against any attorney in the state of Montana are referred to this commission. Local grievance committees are appointed in each district, in each county. They are then referred to the local grievance committee. That committee then makes a recommendation. They investigate; they see if it is a dilatory matter, whether it's a breach of ethics or whether it's a violation of the law. Then it's referred back to the commission on practice. The commission on practice then has to make a determination of what further proceedings should be held, whether there should be a public censure, a private censure, or whether they should just

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get hold of the fellow and tell him to get his work done, or whether it's a case for disbarment or removal or suspension. In the eight years I've been on this, we've done each and every one of those things. It's one of the most unpopular type jobs you can get. It's non-paying. And, I'm hopeful that you'll adopt the minority and eliminate the commission on practice but then the supreme court will have to go back through and figure out some other way to handle the same thing. Does that answer your question?

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. McNeil's --

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I think we all realize that a provision of this kind is something that will seldom be used. It's something that will not often be invoked against the judge, but I think it's essential that something along this line be done and I believe that Mr. Aronow's amendment to section ten is a sensible, reasonable approach to it and I support it.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I simply want to rise and support Mr. Aronow's amendment. We have reviewed this, as I say, in this ad hoc committee. I discussed it with members of the minority and members of the majority. We all think that it does what we want it to do. We are particularly interested

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in seeing to it that district judges and supreme court justices have some protection, not only of themselves in the case of senility or alcoholism, but frequently charges are made against judges which they, of course, are almost powerless to answer. If there is a commission before whom those charges can be filed, the judge has an opportunity to defend himself. This also is a factor and the use which can be made of this commission.

CHAIRMAN GRAYBILL: The issue is on Mr. McNeil's substitute motion to delete section ten in its entirety. All in favor say --

DELEGATE ARONOW: That motion was voted down.

CHAIRMAN GRAYBILL: Oh, that's defeated.

DELEGATE ARONOW: Yes.

CHAIRMAN GRAYBILL: I beg your pardon.

DELEGATE ARONOW: It's on my motion.

CHAIRMAN GRAYBILL: Right. I beg your pardon. Well, we would have defeated it twice, Mr. Aronow.

(Laughter.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Would Mr. Aronow yield to a question?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: I yield, Mr. Aasheim.

DELEGATE AASHEIM: Now, your commission here is going

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to be set up to judge judges, and you have there three judges on that commission. Now, why do you select judges to judge judges?

DELEGATE ARONOW: Mr. Aasheim, the reason -- this is not the group to judge. This is the group to investigate and look into the matter and make recommendations, and we felt, also, that some of these things can be handled quietly without the need of going to a hearing before the supreme court. That in the instance where a judge is getting old and lost part of his marbles, if I may use that expression, maybe a group of judges can go to him and persuade him to voluntarily retire. Or, if he has habitual alcoholism, maybe they can get him to go get boiled out and on the wagon again, and if that doesn't work, then, of course, they bring to the attention of the supreme court the results of the investigation. Or, perhaps a judge has been injured in an accident, has had a serious illness which is apt to become permanent in nature, maybe that they can then convince him that he should step down voluntarily without going to the need of trial and all that type of thing.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, I recognize your deep concern about this and I think you have thoroughly studied it, and I think that this is the root of most of our problem or problems. I think very few of us recognize the position

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of an attorney when he is placed before a judge, no matter what his position is, whether he's a trial attorney or just any attorney in probate. And, sometimes I have found out about a judge after he has passed away -- how rotten he was -- and an attorney would tell me what he had done to make himself unpopular with the attorneys, but the attorney, during the time of this man's term of office, would not dare to speak out. And I think our whole judicial system is in danger because of the position we have placed our judges in now. It looks to me like they're in here for life, because attorneys don't dare to speak out against them, and the public doesn't know. So, I say, why should a judge judge and judge. I would rather see more attorneys on this commission, myself. I know we have a good deal of criticism of attorneys, but I think in this area I would surely respect their judgment, but maybe you have reasons why you think a judge would do a better job than an attorney.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: In response to Mr. Aasheim, I think what our fear is, Mr. Aasheim, is that an attorney on this commission who probably thought he got a bad decision -- we always think that every time we lose one -- could bring charges against that judge and we'd rather avoid that and let the judges do their own judging of eachother.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I might also explain to Mr. Aasheim

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that we have never had a commission of this type to which a practicing lawyer could go. The only way that you can get rid of a judge is through impeachment or wait until the next election and try to get somebody to run against him. This is a procedure where a letter can be written or a charge filed with this commission and ask them to look into it, investigate it, and if the facts are found to be true, then to take such action as might be deemed appropriate.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I rise for the purpose of making an amendment then. I respect your judgment, Mr. Aronow, and I realize the predicament of the attorneys in relation to the judges, and I wonder, then, if we shouldn't give more consideration to a lay person. Let him stand as sort of a liaison between the judges and the attorneys. So, I move to amend, to strike in Mr. Aronow's motion, the word, three, to two; and in lieu of one before citizens, put two. Then we'll have two citizens, two judges and one attorney. And I move the amendment.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim's amendment has the effect of reducing the number of judges on the committee -- the commission from three to two and the number of citizens on the commission from one to two, so that it would be two judges, one attorney and two citizens, neither a judge nor an attorney. Is there further discussion?

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(No response)

CHAIRMAN GRAYBILL: All in favor of Mr. Aasheim's amendment say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it is adopted. Are there further amendments?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you for your consideration, upon the motion of Mr. Aronow, when the committee does arise and report, after having had under consideration section ten, as amended, it recommend that the same be adopted. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The Ayes have it and it is adopted. Will the Clerk please read eleven?

CLERK SMITH: (Reading) Section Eleven. Clerk of the Supreme Court: The chief justice shall appoint a clerk of the supreme court who shall hold office at the pleasure of the supreme court. The salary and qualifications shall be fixed by law, and the duties of the office shall be prescribed by the supreme court. (End reading) Section eleven, Mr. Chair-

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man.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that when this committee, after having consideration of section eleven, does rise to report, that it approve and recommend passage of section eleven. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: This particular section would appoint the clerk of the supreme court. His term would be for whatever the supreme court -- so long as he served at their pleasure, his salary would be fixed by law, and his duties prescribed by the supreme court. Now, this is in keeping, generally, with the idea that if the supreme court is to exercise any general supervisory control of the other courts. The clerk --the office of the clerk of the supreme court will admirably serve in that respect. It seemed to us that an appointed clerk might be, in the long run, a better facility for that purpose. So far as the minority is concerned, we like the idea of an appointment. The majority has always insisted on election. We think this question of election, and probably term of office should be left here on this convention floor, much like the selection of the judges. Have at it.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I have an amendment which I have proposed. It is dated February 26, 1972, and I

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1 think it's on all the Delegates' desks. This is in the hands
2 of the Clerk and consists of the first paragraph of the two
3 part amendment which I sent up to the Chair. Would the Clerk
4 read the proposed amendment?
5 CLERK SMITH: (Reading) Mr. Chairman, I move to
6 amend section eleven of the Judiciary Committee minority pro-
7 posal, being page forty-five, lines three, four and five, by
8 deleting it in its entirety and inserting in lieu thereof the
9 following material: There shall be a clerk of the supreme
10 court who shall hold his office for a term of six years. He
11 shall be elected by the electors at large of the state and his
12 compensation shall be fixed by law and his duties prescribed by
13 law and by the rules of the supreme court. Signed, Holland.
14 (End reading)
15 DELEGATE HOLLAND: Mr. Chairman, this is substantially
16 the same as -- I think identical with the proposed majority
17 amendment. The purpose of this amendment is to make the clerk
18 of the supreme court elective. The minority report, which has
19 been -- which the Delegates have chosen to enroll section by
20 section provides for the election of the clerks of the district
21 courts. This merely -- this doesn't change that regard. It
22 merely provides for -- that the article will be consistent and
23 that the clerk of the supreme court will be elected along with
24 the clerks of the district court. Now, the other day I spoke
25 about the election of the state auditor and the state treasurer

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and the state superintendent of schools. I feel the same way about the clerk of the supreme court. He should be elected, too, in accordance with what we've done. I would urge this Convention to keep these offices elective so that the people can have a choice and so that we can get better service.

CHAIRMAN GRAYBILL: The sense of Mr. Holland's amendment is to make the clerk of the supreme court elective. The sense of section eleven, as proposed in the minority report, is to leave that up to the supreme court, who would hold office at the pleasure of the supreme court.

Mr. Brown.

DELEGATE BROWN: Mr. President, I offer a substitute motion. I now move to delete all of section eleven. Mr. President.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: It is my opinion that this is a legislative matter. The more offices we lock into the Constitution, we do not give the people the freedom to elect their public officials. We lock future generations into the officials we think they should have. Therefore, to keep flexibility this type of legislation should be kept out of the Constitution.

CHAIRMAN GRAYBILL: Very well, the sense of Mr. Brown's amendment -- substitute -- is to delete section eleven in its entirety. We'll discuss that.

Mr. Toole.

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DELEGATE TOOLE: Mr. Chairman, I think this Convention should get rid of at least one elective office. I think that this is an antiquated anachronism. I think it's an imposition on the court and I support Mr. Brown and oppose Mr. Holland.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Brown's substitute motion to delete section eleven. I take it you want a roll call vote. Mrs. Warden, did you have --

DELEGATE WARDEN: Mr. President, I just wanted to rise in support of Mr. Brown's motion. I think as far as we lay people are concerned that this is something that is very remote from us.

CHAIRMAN GRAYBILL: Will the Clerk reset the machine? Very well, the issue now arises on Mr. Brown's motion. We'll have a roll call vote. So many as shall be in favor of deleting section eleven in its entirety, please vote Aye on the voting machines. So many as are opposed, vote No. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The ballot is closed. Will you please tally the ballot?

Aasheim - Aye Anderson, J. - Nay

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1	Anderson, O.	-	Aye	Cross	-	Aye
2	Arbanas	-	Aye	Dahood	-	Nay
3	Arness	-	Absent	Davis	-	Absent
4	Aronow	-	Nay	Delaney	-	Nay
5	Artz	-	Nay	Driscoll	-	Nay
6	Ask	-	Absent	Drum	-	Absent
7	Babcock	-	Aye	Eck	-	Aye
8	Barnard	-	Absent	Erdmann	-	Aye
9	Bates	-	Nay	Eskildsen	-	Absent
10	Belcher	-	Aye	Etchart	-	Nay
11	Berg	-	Aye	Felt	-	Aye
12	Berthelson	-	Aye	Foster	-	Aye
13	Blaylock	-	Absent	Furlong	-	Nay
14	Blend	-	Aye	Garlington	-	Aye
15	Bowman	-	Aye	Gysler	-	Aye
16	Brazier	-	Nay	Habedank	-	Aye
17	Brown	-	Aye	Hanson, R. S.	-	Nay
18	Bugbee	-	Aye	Hanson, R.	-	Nay
19	Burkhardt	-	Aye	Harbaugh	-	Aye
20	Cain	-	Absent	Harlow	-	Aye
21	Campbell	-	Absent	Harper	-	Aye
22	Cate	-	Absent	Harrington	-	Nay
23	Champoux	-	Absent	Heliker	-	Aye
24	Choate	-	Aye	Holland	-	Nay
25	Conover	-	Aye	Jacobsen	-	Nay

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James	-	Aye	Robinson	-	Aye
Johnson	-	Aye	Roeder	-	Aye
Joyce	-	Aye	Rollins	-	Aye
Kamhoot	-	Aye	Romney	-	Nay
Kelleher	-	Absent	Rygg	-	Aye
Leuthold	-	Aye	Scanlin	-	Aye
Loendorf	-	Aye	Schiltz	-	Nay
Lorello	-	Nay	Siderius	-	Nay
Mahoney	-	Nay	Simon	-	Aye
Mansfield	-	Aye	Skari	-	Aye
Martin	-	Aye	Sparks	-	Aye
McCarvel	-	Nay	Speer	-	Aye
McDonough	-	Nay	Studer	-	Aye
McKeon	-	Nay	Sullivan	-	Nay
McNeil	-	Nay	Swanberg	-	Nay
Melvin	-	Aye	Toole	-	Aye
Monroe	-	Nay	Van Buskirk	-	Nay
Murray	-	Nay	Vermillion	-	Aye
Noble	-	Aye	Wagner	-	Aye
Nutting	-	Aye	Ward	-	Aye
Payne	-	Aye	Warden	-	Aye
Pemberton	-	Aye	Wilson	-	Nay
Rebal	-	Aye	Woodmansey	-	Nay
Reichert	-	Aye	Mr. Chairman	-	Aye

CLERK SMITH: Mr. President, fifty-seven voting Aye,

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thirty-one voting No.

CHAIRMAN GRAYBILL: Fifty-seven Delegates having voted Aye to delete section eleven, section elevan is deleted. Will the Clerk please read section twelve?

CLERK SMITH: (Reading) Section twelve. Clerk of the District Court: There shall be a clerk of each judicial district court in each county who shall be elected by the voters therein and who may appoint such deputies as provided by law. The term of office, qualifications, and the compensation of the district court clerk and deputies shall be provided by law. The duties of the clerk and deputies shall be prescribed by the district court judge and as provided by law. (End reading) Section twelve, Mr. President.

CHAIRMAN GRAYBILL: Mr. Holland -- or, I mean, Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that, after this committee has had under consideration section twelve on page forty-five of the minority report, that when it does rise to report, it recommend the deletion of paragraph one and paragraph two and the retention of paragraph three in the minority report. Mr Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Again we come to something of a controversial matter with regard to the clerk of court. The Local Government Committee also deals with the clerk of the court,

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as it does with all county offices, and it appears, at least to the minority, that the local government -- that the clerk of the court should be continued and kept in the local government article as all other county officers are. There is in our mind a good reason to suppose that in many counties the functions of the clerk of court can be combined with other offices at considerable savings. We believe that by simply providing for the duties as provided by law and as prescribed by the judge, that is all that is really necessary in the judicial article. We believe that flexibility and perhaps economy can be achieved more readily if the clerk of the court is left with local government.

CHAIRMAN GRAYBILL: The Chair understands it to be the sense of Mr. Berg's motion that the first two paragraphs of section twelve, which is lines nine to fifteen on page forty five, will be deleted under his motion and the last sentence on line sixteen and seventeen would be retained, which says: The duties of the clerk and deputies shall be prescribed by the district court judge and as provided by law.

DELEGATE BERG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I should like to amend that so that it reads: The duties of the clerk of the district court -- deleting the word, deputies, and adding clerk of the district court.

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CHAIRMAN GRAYBILL: Very well, we'll delete the words and deputies. The sentence now in his motion shall read: The duties of the clerk of the district court shall be prescribed by the district court judge and as provided by law.

Mr. Brown.

DELEGATE BROWN: Mr. President, I again move a substitute motion that section twelve be deleted for the same reasons that I previously argued and for the additional reason that this section as written was in direct conflict with the Local Government report and by leaving the last paragraph in here we, by implication, say there must be such an office and I think it's going to be a problem for Style and Drafting, and county offices should not be in the Constitution.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: I rise to support Mr. Brown's motion that this be deleted, for the county clerk. I feel if we would take the state supreme court clerk -- we delete him. I feel we should do this likewise in the county. I feel this is a move -- I oppose the move to delete the supreme court clerk and I think if we leave these in as elected people, I think we're going to have a problem. Thank you.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: As a member of the Local Government committee, I would like to point out that the county officials that are elected are kept in a form of government that is to be

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extended for a four year period, then put on the ballot and voted by the people for acceptance of another form of government, which could delete the county officers or retain them.

CHAIRMAN GRAYBILL: Very well, the motion is on the substitute motion of Mr. Brown to delete section twelve in its entirety.

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, would Mr. Brown yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Brown?

DELEGATE BROWN: I will yield.

DELEGATE ROD HANSON: Mr. Brown, how is this handled in Local Government?

DELEGATE BROWN: Local government -- I'm not on that committee and I hate to speak on it. It's my impression from reading their report that this will be one alternate form of government to have your county offices--county attorney, clerk of court, county treasurer, and so on. Then, at county option, they may eliminate this type of office and go into another form of government.

DELEGATE ROD HANSON: I misunderstood. I thought you said it was handled as a county office under the Local Government report. It isn't then?

DELEGATE BROWN: Yes, yes it is. I'll defer to Mr. Ask.

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DELEGATE ROD HANSON: O.K.

CHAIRMAN GRAYBILL: Mr. Hanson, Mrs. Blend just explained that. Now, perhaps you didn't get it but in the Local Government report, proposal -- of course, we haven't adopted that yet -- they establish what is known as a form of government which retains the existing county officers for three to four years, after which there shall be an election and then whether or not they were retained depends on what the public did at the election.

DELEGATE ROD HANSON: This was my question. Is the clerk of court retained in that list of county officers in Local Government that --

CHAIRMAN GRAYBILL: The clerk is contained in the list of local government officers which they put in the form of government that will be retained for four years and then put on the ballot. That's the present majority proposal on Local Government. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: If not, the issue is on Mr. Brown's substitute motion to delete section twelve in its entirety. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. We will

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use the voting machines without a roll call. All in favor say Aye. All opposed vote No on the voting machines. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, fifty-eight Delegates having voted Aye and twenty-nine No, the section -- section twelve is deleted in its entirety. Will the Clerk please read section thirteen?

CLERK SMITH: (Reading) Section Thirteen, District Attorneys. There shall be elected district attorneys whose jurisdictional area, qualifications, term of office, salaries and duties shall be provided by law. (End reading) Section thirteen, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that when this committee, after having consideration of section thirteen of the minority report, does arise and report that it will recommend the passage of the same. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: In this article, we have referred to what we know now as county attorneys as district attorneys and we did that with this in mind, that in time we contemplate

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that perhaps the jurisdictional area of the prosecuting attorney may be enlarged. It may may comprise more than one county; it may comprise more than two counties and even part of a third in some parts of the state. And, therefore, we left the jurisdictional area of the district attorney to the legislature. Again, we were looking toward flexibility even in this office. Now, we understand that at the present time and for the near future, at least, a district attorney will, in fact, still be the county attorney and his jurisdictional area will be the county in which he is elected, but we have tried to make this flexible enough to accommodate any changes, for example, local government may make. Now, I imagine that Mr. Brown will consider the district attorney, like the clerk of the court, are really not appropriate in the judicial article and move to delete them. I would caution you, however, with regard to the county or district attorney that he really is the chief prosecuting officer in the area he represents. That he is, actually, an officer of the court and therefore in my mind properly belongs in the judicial article. Thank you.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move to delete section thirteen in its entirety. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce's motion is to delete section thirteen in its entirety.

Mr. Joyce.

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DELEGATE JOYCE: It seems to me this is -- Mr. Brown's point is perfectly applicable to the district attorneys. This is a matter that should be left to the legislature. Surely, the legislature is never going to abolish district attorneys. They are going to have to have attorneys to prosecute crimes in the name of the state. And, let me point out to the Convention as what happens by putting the clerks of the court and the county attorneys in the judicial article in the 1889 convention. There came -- they were elected for two years for years and years and years -- all the county officials were. So, they had a constitutional amendment and they only amended the one article though where -- the local government article -- and raised it to four. For years then the county attorney was stuck with the two year term. Everyone in the court house had a four year term. Similarly, the clerk of the court was stuck the same way. Then, under the old Constitution where they had a raise and you couldn't get a raise in salary during your term, why, they'd raise -- they'd move it beyond where most of the county officials were to raise the salary just before their election, so the county attorney -- or, all the officers that took office then at the next election would get the raise, but the clerk of the court and the clerk of the supreme court, being out of phase with them, were always two years behind and this shows the futility and the silliness of writing this stuff into the Constitution and that the legislature ought to

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be able to provide district attorneys or whatever methods of attorneys they need to prosecute, so instead of doing the clerks of court and the county attorneys a favor in the 1889 Constitution, it seems to me over the years they caused the holders of those respective offices thousands of dollars willy-nilly and unwittingly.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Will Mr. Ask yield to a question?

CHAIRMAN GRAYBILL: Mr. Ask?

DELEGATE ASK: Yes, I'll yield.

DELEGATE BERG: Did you include county attorneys in the local county government as an enumerated office?

DELEGATE ASK: Yes, the county attorneys are listed similar to the clerks of the district court. They are one of the alternative forms of government.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Joyce's motion to delete section thirteen in its entirety. All in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Now, ladies and gentlemen, there are some additional sections proposed. Mr. Wilson, you proposed an additional section. I think the language is on the desks of the Delegates. May we read your

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DELEGATE WILSON: Yes.

CHAIRMAN GRAYBILL: Very well, the Clerk will read Mr. Wilson's proposal?

CLERK SMITH: (Reading) Mr. Chairman, I move to amend the judiciary article, being page forty-five, by adding a new section to read as follows: Section Fourteen: Probate Attorney. The district judge shall appoint in each county or judicial district a probate attorney who has been admitted to practice law in Montana. The probate attorney shall assist county or judicial districts citizens in probating or administrating -- administering estates. The legislature shall set the salary of the probate attorney. Signed, Wilson. (End reading.)

DELEGATE WILSON: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: I move that when this committee does arise, after having under consideration section fourteen, an amendment to the judicial article, that they report in favor of same. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: I received more people's complaints in this particular field than any other area what would -- that was to be considered in the Constitution. They felt that there was such a great variation in the handling of different estates in the different areas of the state and the abuses that was

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occuring in several areas warranted some consideration of this type of proposal. The fees allowed attorneys in probating estates are described in the following statute: The executor and the administrator shall be allowed all necessary expenses in the care, management and settlement of the estate, including a reasonable fee paid to attorneys for conducting the necessary proceedings and for conducting necessary actions in courts or incurred therefor, the amount of which attorney fees shall be in all cases in the absence of agreement fixed and determined by the court having jurisdiction in the settlement of the estate, and for his services such fees as provided in this chapter. Revised Codes of Montana, 1947. This statute allows a reasonable fee to be paid attorneys for probate which is fixed by the court. The fee an attorney charges for probating an estate is usually based on the minimum fee schedule for the Montana Bar Association. The minimum fee for probate set out in this schedule is a fee equal to one and a half times the statutory fee allowed to executors and administrators -- will be charged in all probate proceedings. Where there is a change of attorneys during the course of administration but one fee will be allowed. Thus, probate fees of attorneys are one and one-half the fee allowed for executors of estates. The statute setting fees of executors and administrators states: Compensation of executors and administrators, when no compensation is provided by the will or the executor renounces all claims

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thereto, he must be allowed commissions upon the amount of the estate accounted for in -- as follows: For the first thousand dollars at the rate of seven percent; for all above that sum, not exceeding ten thousand dollars, at the rate of five percent; for all above ten thousand dollars, not exceeding twenty thousand dollars, at the rate of four percent; and for all above twenty thousand dollars at the rate of two percent. If there be no more than one executor, only one commission must be allowed. The same commissions must be allowed to administrators. In all such cases, further allowances may be made as the court or judge may deem just and reasonable for any extraordinary services. The total amount of such extra allowance must not exceed the total amount of commission allowed by this section. Thus, on a one hundred thousand dollar estate the minimum fee charged by an attorney for probate would be thirty seven hundred and eighty dollars. A higher fee may be charged on work in law. However, the fee must be approved by the court. The minimum fee schedule notes that many judicial districts in Montana there are court rules which set attorneys' probate fees. However, several courts were contacted by phone and most court rules follow the minimum fee schedule. Since courts are free to fix whatever they determine to be reasonable probate fees, there are no set -- there are no set uniform fees based on the size of estates. The complaint is that probate fees are too high. Establishment of a public probate attorney

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paid on a salary basis would eliminate exhorbitant probate fees. Some states have set up procedures whereby solvent estates can be probated without court intervention. However, legal forms must be filed which means the attorney still must be consulted. The only solution for reducing high probate fees for attorneys, then, is a public probate attorney. In our discussion of this amendment, I hope that we arrive at a more equalized station of estate costs. Some method must be found to provide a solution for the many people who are complaining about the present system. The adoption of this amendment would make available services for those who want to use them. Mr. Chairman, I urge the adoption of this amendment.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, I'll take the bait for the legal profession, now that it has been put forth, and only say this is a statutory thing. If we reach the place where you've abandoned all hope of writing a Constitution, then we can start playing with such things as fixing what -- we set up an ombudsman for the wealthy rancher who is worried about the fee, and I don't think we should inject ourselves into either fixing attorneys' fees or the price of grazing fees on state lands or anything else of that nature that is strictly statutory, and I think we should vote on it and I guess we'll determine how we're going to progress with a Constitutional Convention after that.

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CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I hesitate a little bit to rise on this one. You know, I've been getting along pretty good with my seat mate here all day, but Delegate Wilson is right. This is probably one of the things that more people talked to us about in our district than any other one item, and that was, when there was a reasonably small estate -- say, forty, fifty thousand dollars -- I'm not talking about wealthy ranchers. I don't know whether Delegate Wilson is one or not, but he may be. I don't think so. But, when one of the older -- say it's an older couple -- one of them dies, before the widow gets out of it, why, she'll have anywhere from a thousand to two thousand dollars in attorney fees. Now, most of the work will be done perhaps by the secretary because generally these estates are in pretty good shape. There isn't much to look at, and it's just too much money for what you get. Now, I think personally that this is something the legal profession could probably straighten out, but apparently they have not straightened it out so maybe something like this will bring it out to where that they will. And, to finish this off, I don't know of any other service that you buy that you're required by law that you must buy this service, and then the fee for that service is determined by the amount of money that you have. Now, there may be other businesses that you pay this way, but I certainly don't know of any, and I would support Proposal

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Number One Fifty-Five -- it was in the original. I think the Judiciary Committee rejected it and that's why it's being brought back here. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, I don't see eye to eye with Mr. Wilson very often but I do on this issue. I think he has -- this proposal has merit and I'll support it a hundred percent.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow Delegates. I haven't been on my feet, but this was one of the topics that was brought to my attention and the attention of others quite firmly. A Mr. McConvil up there had a small estate to settle and he had to pay out more than fifty percent of that to settle the estate, and others have had just a lot of problems in getting estates settled. I remember when my father-in-law passed away about fifteen years ago in Butte, there were two deeds to property. When he passed away, all my mother-in-law had to do was sign the other deed and file it. Now, this is a thing of the past but it was a simple way for our parents to settle small estates. Thank you.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. President, would Mr. Wilson yield to several questions?

CHAIRMAN GRAYBILL: Mr. Wilson, do you want to yield?

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DELEGATE WILSON: I yield.

DELEGATE LOENDORF: Mr. Wilson, have you estimated how many attorneys the government would have to employ to perform this function?

DELEGATE WILSON: Well, Mr. Furlong -- is that the name?

(Laughter)

DELEGATE WILSON: Loendorf--Loendorf, excuse me.

DELEGATE LOENDORF: That's closer than some.

(Laughter)

DELEGATE WILSON: You both have yellow shirts on today and I get a little bit confused. I think we say in our proposal that there would be one in each judicial district. Now, this would be available for whoever wanted to use them in that capacity.

DELEGATE LOENDORF: And in the judicial district of Yellowstone, how many attorneys do you think it would be necessary to employ there?

DELEGATE WILSON: This would be determined on the amount of use you wanted to make of this particular person. If everybody wanted to use him, why, perhaps you would need several.

DELEGATE LOENDORF: I'll summarize my final question, then. Have you made an estimate, in addition to the cost of the attorneys' salaries, the cost for libraries, office space,

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and secretaries?

DELEGATE WILSON: We have made no estimate on this particular area and we see that this is something that would have to be determined as the thing was tried and used.

DELEGATE LOENDORF: That's all the questions I have. Mr. Chairman, could I speak to the merits?

CHAIRMAN GRAYBILL: Yes.

DELEGATE LOENDORF: First of all, as Mr. Davis ably pointed out, I think this is not a constitutional matter and I think locking this in the constitution would be a grave mistake in lieu of the answers Mr. Wilson gives to the questions. What will it cost the taxpayer? I submit it will cost the taxpayer more than the total amount of attorneys' fees now being paid in the state of Montana each year. Each attorney now furnishes his own office, his own secretary, and his own library--all, of course, is a part of the fee he charges you. But also look at who benefits from this. The average taxpayer is going to have to pay the bill. If you're wealthy and have a big estate, you can avoid a large fee by employing a government attorney, but if you're not, you're going to have to pay for everybody else's estate.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, along the line Mr. Loendorf was talking about, in Yellowstone county I would guess our firm -- a small firm, a three-man firm -- probably does

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in the neighborhood of twenty to twenty-five probates a year. That's on a good year. Many of them are small and one or two of them are of some size. I would guess that it would require -- if one of us was working full time, it would require the services of that one partner to do all the probates our office does in a given year. Now, we are three lawyers out of a hundred and ten or fifteen in Yellowstone county and all the other lawyers are probably doing about the same amount of probate as we're doing. I would guess in Yellowstone county alone, the proposal that Mr. Wilson and Mr. Kamhoot and the others have made would require twenty-five lawyers to handle the probate work in Yellowstone county on this basis.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I presume that after the manner in which we disposed of the county attorney and the clerks of the district court and the clerk of the supreme court by turning them over to the tender mercies of the legislature that certainly the probate attorney would likewise be statutory in character rather than constitutional. However, I want to say this. The handwriting is on the wall on this matter. Everywhere I go I run into complaints about it and they even come into my office, hunting me down to complain about it and I have nothing to do with it. I find that in the state of Washington, to the west of us, they have to a degree solved the matter -- not in the large estates but in the small ones -- not by estab-

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lishing an office such as the probate attorney, as is envisioned by Delegate Wilson, but they have provided a means by statute whereby certain estates, especially the smaller ones where only the decedent and his spouse are concerned -- his or her spouse are concerned -- can handle it by filing an affidavit with very little cost, very little procedure in the court, and that obviates the necessity of carrying out a complete probate. Now this agitated the people of Washington for a considerable time and they tried to get action in the legislature -- I don't believe they ever tried to through constitutional means -- but they got nowhere in the legislature, and the matter was resolved by means of initiative and referendum, and the people of the Evergreen State voted overwhelmingly in favor of the proposition and it's been in force for several years, and the attorneys who I've contacted there for senior citizens who are interested, aver that it has been very satisfactory.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President, now that this matter has been brought up, I remember that I have three or four letters here that I received that were very adamant on somebody doing something on these probate matters, and some of them seem to be -- have some pretty good complaints. I don't happen to have them with me but I do know that Colorado, some time ago, had a law put in in which they handled small probate matters for a very small fee. I don't think the cost to the state

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would be too much because, as Delegate Schiltz said, they handle probably twenty-five. If you gave them all to one man it would keep him busy -- an average price of a thousand or so on those and for the average probate cost, it would make some lawyer a good living. I don't see where the small cost attached to this probate deal would be too bad.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Mr. Chairman, I have managed to refrain throughout the day from commenting on anything dealing with the judicial article. I suppose I could say I am still refraining from discussing anything dealing with the judicial article. But, we are talking about something of importance and it is something that I know something about. I do quite a lot of this type of work and there is a lot of justice in what is being said here that there are many occasions, I think, where the attorneys are rather grossly overpaid and it isn't just that they're overpaid, this has to come in cash when cash may be hard to find. It comes at a time when there are many adjustments to be made often within a family and it's really a very sad situation. There is one other thing that is considerably worse that happens at the same time. That's the fee paid to the executors and administrators for doing nothing. So, don't neglect that if you're going to muck out here a messy situation. Let's get to the bottom of it. There's one other thing that I keep in mind. You know, the state of Montana doesn't have

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clean hands in this matter. They rap that widow for a pretty juicy chunk of dough and stick it in our general fund. So, let's get at that one, too. Those inheritance taxes we pay the state of Montana often exceed what is paid to the federal government. This is something that you may not realize but there is a sixty thousand dollar exemption in all federal estates, and the amount of tax paid there, added to these executors' or administrators' fees and this attorney fee, they're pretty rough, and I think there must be -- I think Mr. Romney is right -- the handwriting is on the wall, and I think it's time we did something about it. I doubt very much that it belongs in our state Constitution, nor that we should decide it here on the floor of this Convention in these minutes, but if we are going to stop here and take the time to deal with a problem, I'd like to do it, but I'd want to do it right. We would need quite an army, all right, of people because there's a lot of this work to be done and it rolls around to all of us, one time or another, that our estate is going to be probated so you can count on the fact that it's going to be continuing forever, and the sad part about it here, I think, is that in connection with this there's a slap at the legal profession. Maybe the trouble with lawyers is we're picked out of the general populace so there's bound to be some rotten apples who creep into that profession as they do into everything else. But, aside from that, somehow the amount of the legal fees is justly sub-

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ject to criticism and if you will approach this in a way that deals with all of the evils attendant upon the cost charged to the estate of a deceased person at the very time when it's the hardest to pay, then I say, well, let's go at it.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow Delegates, I would just offer for your information prior to vote a couple of additional observations. In addition to the sometimes detailed method in which we are obliged to indulge in arriving at taxes due as a result of the death of somebody, we also find ourselves involved in trying to unravel a very complex status of title to real estate, which is the result of some laws that have evolved over something like four hundred years. This is another evil which takes a lot of time and it takes, at this state in history, expert legal training and knowledge. This is something else that has to be unraveled. Now, with respect to handling of small estates, it may be of interest to you to know that there is on the books now a statute, 91-5301, which provides for the setting aside of an estate to a widow or her children or a surviving husband, when the estate totals ten thousand dollars or less. So, Montana, by legislation, is keeping in step with the states of Colorado and Washington. In addition, there is another procedure which, if you go to a lawyer you'll learn about -- sometimes it's advisable to indulge in -- I should say there are two. You can establish or accumulate a

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sizeable estate in real estate -- excuse me, in life insurance which is the subject of a fifty thousand dollar inheritance tax exemption in the state of Montana, in addition to which, if you want to shorten up your taxes and your cost, you can consider putting your estate in joint tenancy with your wife if you trust her and the result of that will be that when one of you dies, the survivor will accrue to only one half of the estate and there has been an abbreviated procedure established by the legislature for handling that and it usually generates a much smaller fee and a much smaller inheritance tax. I hope you'll bear those things in mind when you deliberate on this motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, would Mr. Felt yield to a question?

CHAIRMAN GRAYBILL: Mr. Felt?

DELEGATE FELT: Indeed.

DELEGATE SCANLIN: Mr. Felt, would it be possible for you to draw a statement that we could submit to this Constitutional Convention, addressed to the legislative council, urging our attention on the matter of this question of probate to the next session of the legislature?

DELEGATE FELT: Yes, Mr. Scanlin, it would be possible for me to draft something which I would like, and if the body here in some appropriate manner made such a request, I'm

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sure there are many others besides myself who could do so, but I would be glad to help with any such thing as that if called upon.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Wilson's motion that a section fourteen be added to this section -- to this -- Mr. Wilson, do you want to close?

DELEGATE WILSON: Please, Mr. Chairman.

CHAIRMAN GRAYBILL: Surely.

DELEGATE WILSON: I realized that when I introduced this motion that I was going to get a lot of opposition from the legal profession. I realize the many complications that are inured in the handling of probate matters. I, myself, doubt very much that I would ever want to use this person who was appointed, but I do visualize many people, which have been pointed out here today, that would want to use this type of service and I think we should give it all the consideration that we possibly can here in this body. I realize that attempts have been made in the past sessions of the legislature to try to correct some of these situations and I talked with members of the Judiciary Committee, many of whom, after giving it due consideration, agreed with me that something needed to be done. I talked with Mr. Aronow and he also agrees that if some method could be arrived at by this Convention whereby small estates -- or some system could be set up to handle smaller estates and make it available to the people to use, that it would be a ser-

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vice that would be greatly appreciated by these people. Now, if we can also point out, the main thing that we are -- I am interested in is getting some equalization across the state of Montana for these fees that the lawyers charge for the handling of different estates. Now, this varies very greatly from court district to court district. It varies with the judge who is handling the estate and if we could, if nothing else, accomplish an equalization of these fees, we would be doing a great service to the people of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The issue now arises on Mr. Wilson's motion that we add a section fourteen to the judicial article calling for a probate attorney. The district judge shall appoint in each judicial district a probate attorney who has been admitted to practice in Montana -- law in Montana. The probate attorney shall assist county or judicial district citizens in probating or administrating estates. The legislature shall set the salary of the probate attorney. So many as shall be in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be --

UNIDENTIFIED VOICE: Roll call.

CHAIRMAN GRAYBILL: No, it's too late now. So many as shall be opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The motion fails. Now, I paused

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and I waited and I don't think, if you didn't get up, that I should reverse myself and put everyone on record on that. It's defeated. Now, Mr. Schiltz has a proposal that's known as the separate majority proposal on campaign expenses. It appears on page thirty-eight of your book.

Mr. Schiltz.

DELEGATE SCHILTZ: May we have it read, Mr. Chairman?

CHAIRMAN GRAYBILL: Will the Clerk please read what will now be styled section fifteen. We're going to continue right up the numbers here -- section fifteen on page thirty-eight.

CLERK SMITH: (Reading) Section Fifteen - Campaign Expenses: The legislative assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justices of the supreme court and district court judges and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the supreme court or district court judge, nor any person or persons on his or her behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the legislative assembly. (End reading) Section fifteen, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration

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section fifteen of the judicial article, that it recommend the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman and members of the Convention, you've heard all day long about the maintenance of purity of elections of the judiciary. I view this particular section as possibly the most progressive thing I've seen in this Convention yet. It has the effect of putting all candidates on an equal basis from the standpoint of money, which is really the name of the game. It eliminates the possibility of a man with less ability and more money from getting the judicial office. If you're going to have a judge run non-partisan, I think it's only fair that the legislature supply the money. Now, when you consider the amount of money involved in this and the benefits to be gained, I think you'll see the worthwhileness of it. If all twenty-eight district court judge elections were contested in the general campaign and if all five of the supreme court justice campaigns were contested, it would cost -- and if you assume that ten thousand dollars would cover a supreme court campaign race and two thousand a district court race, it would cost the state forty-eight thousand dollars a year, and I think that's a pittance in view of the benefits to be gained by it. You would assure youself of an independent judiciary. You would assure yourself that one man was not buying the job. Now, it seems to me that we must maintain the

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purity of our judges and it seems to me that this is possibly a way of the future. I read the other day that if Mr. Muskie is able to go through all the campaign and finally be elected President of the United States, it's going to cost him or somebody forty million dollars. I think it's in the future that this is going to come to Montana and I can think of no other better place to start as an experiment for a very small amount of money than on the judiciary. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, you have before you on page thirty-eight the separate majority proposal on campaign expenses.

Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I rise to oppose this proposed section on several counts. It is, indeed, an experiment and for that reason certainly should not be locked into the Constitution. If it is felt that this is necessary for judges to run, then I suggest the legislature be approached. Secondly, Mr. Schiltz mentioned that if we were going to have our candidates for judicial office run on a non-partisan basis this was necessary. I believe that earlier in the afternoon we did not specify that they had to run on a non-partisan basis. Presumably, then, the legislature can make it possible for them to run on a partisan basis, in which case they can apply to the party of their choice for campaign funds. As a taxpayer, I really do not wish to have part of my taxes go to

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someone's campaign expenses.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Schiltz's proposal. It's section fifteen, being the separate majority proposal on campaign expenses on page thirty-eight -- be adopted. This provides that the legislative assembly would appropriate funds in contested general election campaign expenses for candidates for offices of justices of the supreme court and district court judges, and nobody could spend any money on their behalf except the money appropriated by the legislature.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I ask for a roll call vote and sufficient seconds.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. All those in favor of the motion, please vote Aye on the voting machine. All those opposed, please vote No.

Mr. Felt.

DELEGATE FELT: (Inaudible. Microphone turned off.) --terminating the opportunity to discuss this by the request for the roll call, perhaps wasn't as loud as I could have been.

CHAIRMAN GRAYBILL: All right, we'll cancel the vote and start all over again.

DELEGATE FELT: And, I had anticipated that at least Mr. Schiltz might close. I wish to rise, and very quickly, but to support the motion of Delegate Schiltz. If this is going

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to be defeated because it's an experiment, keep in mind that the federal Constitution was -- contained a whole series of experiments and they were thought to be quite suitable for use in a Constitution, so I don't think anything should be ruled out completely simply because it's new, any more than it should be accepted for that reason. Here we do have an opportunity, I feel, as Mr. Schiltz has expressed, to do something important. I don't know how many of you have ever been asked to contribute to a judicial campaign. I haven't and as a consequence I have never contributed to one. It makes me feel a little uneasy, to tell you the truth. Somebody's doing it because they can't wage that campaign without it, and I'd rest easier knowing that there wasn't somebody in there ahead of me who might have gotten a little influence. We pay for all things, of course, some way or other so the objection, I think, that as a taxpayer we're not going to pay for this isn't really valid. We are going to pay for it. Somehow they get it around to us, and I feel this should be taken as a very serious possible reform and that in the wisdom of the legislature they can decide how far to implement it with the provision of funds, but that this is something that we really ought to take a good look at, and I'm certainly hopeful that it will get support.

CHAIRMAN GRAYBILL: Very well, the issue now arises on Mr. Schiltz's motion that a section fifteen be added concerning campaign expenses, the same as is shown on page thirty-

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eight as separate majority proposal on campaign expenses. I have explained it to you. We will use the voting machine. So many as are in favor, please vote Aye, and so many as are opposed, please vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Close the ballot. Take the ballot, please.

Aasheim	-	Nay	Berthelson	-	Nay
Anderson, J.	-	Nay	Blaylock	-	Aye
Anderson, O.	-	Nay	Blend	-	Nay
Arbanas	-	Nay	Bowman	-	Nay
Arness	-	Aye	Brazier	-	Nay
Aronow	-	Aye	Brown	-	Aye
Artz	-	Aye	Bugbee	-	Aye
Ask	-	Nay	Burkhardt	-	Aye
Babcock	-	Nay	Cain	-	Nay
Barnard	-	Aye	Campbell	-	Aye
Bates	-	Nay	Cate	-	Absent
Belcher	-	Absent	Champoux	-	Nay
Berg	-	Aye	Choate	-	Absent

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1	Conover	-	Nay	Jacobsen	-	Aye
2	Cross	-	Absent	James	-	Aye
3	Dahood	-	Aye	Johnson	-	Nay
4	Davis	-	Absent	Joyce	-	Nay
5	Delaney	-	Nay	Kamhoot	-	Nay
6	Driscoll	-	Nay	Kelleher	-	Absent
7	Drum	-	Nay	Leuthold	-	Nay
8	Eck	-	Absent	Loendorf	-	Nay
9	Erdmann	-	Nay	Lorello	-	Aye
10	Eskildsen	-	Nay	Mahoney	-	Aye
11	Etchart	-	Nay	Mansfield	-	Aye
12	Felt	-	Aye	Martin	-	Nay
13	Foster	-	Aye	McCarvel	-	Aye
14	Furlong	-	Nay	McDonough	-	Aye
15	Garlington	-	Nay	McKeon	-	Aye
16	Gysler	-	Nay	McNeil	-	Aye
17	Habedank	-	Absent	Melvin	-	Aye
18	Hanson, R. S.	-	Aye	Monroe	-	Aye
19	Hanson, R.	-	Aye	Murray	-	Aye
20	Harbaugh	-	Nay	Noble	-	Nay
21	Harlow	-	Nay	Nutting	-	Nay
22	Harper	-	Aye	Payne	-	Nay
23	Harrington	-	Aye	Pemberton	-	Nay
24	Heliker	-	Aye	Rebal	-	Nay
25	Holland	-	Aye	Reichert	-	Aye

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Robinson	-	Aye	Studer	-	Nay
Roeder	-	Aye	Sullivan	-	Aye
Rollins	-	Aye	Swanberg	-	Aye
Romney	-	Aye	Toole	-	Nay
Rygg	-	Nay	Van Buskirk	-	Aye
Scanlin	-	Nay	Vermillion	-	Aye
Schiltz	-	Aye	Wagner	-	Absent
Siderius	-	Aye	Ward	-	Aye
Simon	-	Nay	Warden	-	Aye
Skari	-	Aye	Wilson	-	Nay
Sparks	-	Nay	Woodmansey	-	Nay
Speer	-	Nay	Mr. Chairman	-	Aye

CLERK SMITH: Mr. President, forty-six voting Aye, forty-five voting No.

CHAIRMAN GRAYBILL: Forty-six Delegates having voted Aye and forty-five Delegates voting No, section fifteen is adopted. Now, ladies and gentlemen of the committee, we have only one more matter that has been brought up to us and that concerns the justice of the peace. Therefore, I'm going to propose that we go right ahead rather than have a recess. Mr. Harrington, may we read your amendment to provide for a section sixteen?

DELEGATE HARRINGTON: (No audible response)

CHAIRMAN GRAYBILL: Mr. Harrington's amendment --

DELEGATE ESKILDSEN: Mr. Chairman.

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CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, we do have two other sections here. They are in the Constitution as we now have it. Will we be doing anything with those, or will they just be considered because they are in the old Constitution that we are adopting them?

CHAIRMAN GRAYBILL: I don't think that --

DELEGATE ESKILDSEN: There's the exemption law and another section besides that -- I can remember -- in the judiciary committee. We had them before us.

CHAIRMAN GRAYBILL: Well, just a moment. Mr. Eskildsen, we voted to go down the minority report and we've gone down the minority report and we've picked up everything we've passed and so, unless somebody makes an amendment, we're all through, as far as I can see. Mr. Holland, isn't that correct?

DELEGATE HOLLAND: No, there are two unanimous proposals at page sixty-five.

CHAIRMAN GRAYBILL: Oh. Well, let's see. Wait a minute then. I see. Well, I still think we ought not to have a recess. I think we'll be through here in a few minutes. Mr. Harrington, your proposal is to have -- to add a section sixteen, which would be the same as on page forty-five, is that right?

DELEGATE HARRINGTON: (Inaudible. Microphone not turned on.) --Mr. Chairman.

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CHAIRMAN GRAYBILL: No. It's the same as the majority section sixteen on page eight and it happens to be proposed section sixteen. May the Clerk read it?

DELEGATE HARRINGTON: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, Clerk, page eight, section sixteen of the majority report, beginning at line twenty-six. Will you please read.

CLERK SMITH: (Reading) Section sixteen - Justices of the Peace, Election, Qualifications, Compensation, Jurisdiction: There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation as provided by law, who shall hold office for the term of four years. There shall be provided facilities for such justices so that their duties may be performed in dignified surroundings. Justice courts shall have such original jurisdiction within their respective counties as may be prescribed by law. They shall not have trial jurisdiction in any criminal case designated a felony, except as examining courts. The legislature may provide for additional justices of the peace in each county or other types of courts below the district court level as is deemed necessary. (End reading) Section sixteen, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Harrington has proposed an amendment to add a section sixteen to the judicial article, the same as section sixteen on page eight of the

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majority report.

Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I move that when the committee does rise and report, after having under consideration the new section sixteen of the Judicial Committee article, that the same be passed.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Saturday afternoon, it took us about, I'd say, five minutes to completely wipe the justice of the peace courts off the books as far as the Constitution is concerned. I feel, as many Montanans feel, that the justice of the peace court, or the poor man's court is another name for it, or the people's court, is one court that should be maintained in the Constitution. Now, the article -- section sixteen of the majority report does set forth that there shall be qualifications and I believe that there should be reform in these courts, but I do believe that these courts should remain. These are the only courts in Montana that a citizen can appear before them without the benefit of lawyer and I feel that it is very important that these be maintained, and I feel as we go through the procedure this afternoon, we have wiped out quite a few jobs -- I don't mean jobs, I mean constitutional positions -- and I feel that this particular section should be passed and maintained. However, I do feel that the qualifica-

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tions should be set and reforms should set into these courts but I feel they are important. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: George Harper, you asked someone to wave a flag when we started to talk about the people's court. Here it is. The majority report, which is now the amendment proposed by Delegate Harrington, would put in the Constitution an elected people's court. What is the difference between that and the minority report? The minority report simply says, leave it up to the legislature. I don't want to leave it up to the legislature. I want elected people's courts in this Constitution. Now, this majority report does many things that the Citizens Council wanted. It abolishes this fee sharing system. It requires that they be on a monthly compensation. It directs the legislature to establish minimum training and qualifications. Now, how does this work under the present system -- and the amendment would upgrade them. But, under the present system, for three dollars and fifty cents you can file a complaint. That's all it costs you and you don't need a lawyer, which means that if your neighbor backs across your lawn and crushes your bike, you can sit down without an attorney and draw a complaint and he's in court. You can serve the summons yourself. If you think the JP might not believe it was validly served, you can pay the sheriff one dollar and his mileage and have him served, and that's all that's necessary. And the rea-

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son I cite this example, I want to show you what the difference can be between keeping them elected in this Constitution and letting the legislature, perhaps, adopt a plan such as the Montana Plan where a committee appoints a magistrate. When you have your trial, let's assume this justice of the peace, or whatever you want to call him, says he's going to throw you out of court because he didn't like the color of your bicycle to begin with. What do you do if you have an elected JP? You can run against him. Or you can get your neighbor on the other side, Fanny Belle Nickleberry, who is an honest, uprighteous citizen, and you can campaign up and down the street -- Fanny Belle for JP -- and get her elected and defeat this incumbent who is arbitrary. What can you do if it's an appointive system? I suppose you can go searching for the committee or council that appointed him. And what can you do when you get there? Presumably he's a friend of theirs or they wouldn't have appointed him, and what if you don't get satisfaction from the committee that appointed this magistrate? There's no way you can get rid of the committee. I submit that this is a very serious constitutional question. The majority plan meets head-on all the criticisms of the present system and in addition requires that they be elected so they are responsive to the delegates, to the citizens of Montana, and not to the committee that appointed them. In addition, there's a practical reason. We are all assuming under the minority plan that there is going

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to be some level of people's court. We just as well call them justices of the peace so we don't have two hundred incumbent judges around the state saying, they've abolished me. Lord only knows what's going to happen. In addition, it preserves the right of appeal to the district court. I know you couldn't get Bob Kelleher from Billings to take care of your appeal from JP court to district court but in Polson we can get it done for the price of a good bicycle. Under the Montana Plan, if you had to appeal from the appointed magistrate's decision, it would be straight to the supreme court of Montana and even in Polson we couldn't get that done without you getting into the bicycle business. I urgently support the amendment and urge the Delegates to consider this.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President, I would just like to say that just because they don't happen to be in the Constitution doesn't mean that they don't have to be elected. I personally think they could very well be elected, that the legislature could so decide, and I think that to put them into the Constitution would be not doing a very good service to Montana.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I have a question. Are we talking about Mr. Harrington's proposal or are we talking about the majority proposal? I'd like to ask him if he'd yield to a question.

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CHAIRMAN GRAYBILL: All right, he may yield, but the answer to your question is, Mr. Furlong -- or, Mr. Harrington proposed an amendment, the text of which is section sixteen of the majority report on page eight, justices of the peace, election, qualification, compensation and jurisdiction. If you want to find the text of what he proposed, it's on page eight and nine of the booklet, the majority report. Mr. Harrington, will you yield?

DELEGATE HARRINGTON: Yes, I will yield, Mr. Chairman. Yes, what I was doing is taking this exactly from section sixteen on page eight and nine of the majority report.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise to a point of order. I read the proceedings of Saturday which says that section one of the majority report be adopted, as the first action of the committee of the whole which was reported to the Convention, and this is an amendment to section one. Are we talking about reconsideration?

CHAIRMAN GRAYBILL: No, sir. Section one was adopted. It may or may not be amended on reconsideration, I don't know; but in any event, Mr. Harrington has proposed adding another section concerning justices of the peace.

Mr. Ask.

DELEGATE ASK: Mr. Chairman, I rise in support of Mr. Harrington's motion to adopt section sixteen of the major-

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ity report. I concur with that has been said by the other persons speaking on this matter and I'll just add one more thought to this. We covered the supreme court today, that we have indicated that they consider approximately two hundred cases -- I think that was the figure. We have twenty-eight district judges in the state of Montana. I don't know the number of cases that they consider. And now we're coming to the courts of Montana that handle far the majority of all of the cases filed in Montana, and by the minority report we are going to completely ignore them. Here's a court that the people can go to in any community and the number of cases -- the highway cases, all types of cases -- and I don't think we should ignore them in the Constitution and I think this particular section, reducing it down to one instead of two in every township, providing for compensation -- monthly compensation -- and training and qualifications certainly improves the old Constitution and I think that's what we were sent here to do, to improve it. This section certainly improves the justice court system. Also, you will note that this section provides that the legislature can also provide for other courts below the district court level if it is deemed necessary, so we are not necessarily locking in the justice court as the only lower court. But I think they are important enough to the people of Montana that we should retain this particular section in this wording. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg.

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DELEGATE BERG: Mr. Chairman, I rise in opposition to this amendment and to this section -- proposed section, I think it's eighteen -- sixteen. I thought yesterday and this morning we had very ably taken care of the inferior court system. We gave it flexibility, the likes of which it has never had before. We tried to set up a system that will grow, that will go on for future generations and adapt to their problems with facilities, the likes of which our Constitution has never given us before. I don't believe that we should lock in any lower court into the Constitution. I am a firm believer in two Constitutional courts, that being the supreme court and the district court. I believe that courts on the lower level should be flexible, should be adjustable and I do not believe in designating them also as constitutional courts regardless of what you call them. Now, we, this morning, discussed all kinds of possibilities that may be handled under the minority article as it was adopted pursuant to the concurrent jurisdiction theory. If we adhere to that we have given to this judicial system great flexibility. We can provide from here on out for any number of kinds of courts or any number of methods of selection on the lower level. We leave it to the legislature and it can be done over the years, not just for ourselves but for our children and I am opposed to imposing any lower court system on them at all.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I realize the sense

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of this Convention is that they don't seem to care what the citizens want and I think they're going to find out when they put this thing up to a vote. But, for the information of the Delegates, in citizen suggestions -- those are suggestions referred by the Chair to the Judicial Committee, if my memory serves me correct, one hundred seventeen citizen suggestions were for the retention of the justice court within the Constitution, six were against.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I talked with a group of people in my community yesterday in a telephone conversation and the master of ceremonies at the other end of the line polled the entire group and they were all in favor of disposing of the justices of the peace. We have no need to redebate this question on justice courts. We decided it once this morning and I think it is unnecessary to bring it up and try to add it into the Constitution. We have been deleting these legislative proposals all along and I hope we continue to delete this one.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I wish to speak in opposition to Mr. Harrington's amendment. I think there is no need to mention justices of the peace in our Constitution. The very fact that thirty-one out of fifty state constitutions do not mention justices of the peace, I think there is meaning to this. And, I want to say that in 1962 when there was an amend-

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ment on the ballot, there was an amendment to remove mention of justices of the peace from our Constitution and at that time, this failed by only one thousand one hundred and seventy-three votes, and I think now that the people in the state are ready to dispose of names. I'm sure we're going to have a justice of the peace system, whatever it's called. We're going to have small claims courts. I'm certain that the legislature is going to handle this well but I think, as Mr. Berg said, there's no need to lock in the term, justice of the peace, in our new Constitution.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I am opposed to the justice of the peace system as we have it now but I favor the amendment of Delegate Harrington. I think when the majority proposal, which represents the basis for Delegate Harrington's proposal, is examined, it is giving us precisely what we want in the state of Montana. It has given us the small claims court that is going to affect more citizens than any other branch of our judicial system. If we are going to set forth in our Constitution a supreme court and a district court and we are going to outline the type of structure that we want in that particular area of judicial concern, then why don't we complete the task? And if we are going to be judicial architects, let's finish the job. Let's make sure that the temple of justice has all of its pillars and the one pillar that is

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1 going to be missing now is the one with respect to the small
2 claims court. That's the one where the citizen wants to take
3 his five hundred dollar case or his thousand dollar case. That
4 is the type of case the lawyer doesn't want in his office. He
5 wants that in a small claims court. He wants the citizen to be
6 able to take care of that matter without having to spend money
7 to retain an attorney. What bothers everybody here, I think,
8 that is bothered is the fact that we are using the term, justice
9 of the peace. I see no magic in that term. It's as good a
10 term as any that can be evolved at the moment, whether you use
11 the term, magistrate, small claims judge, or any other partic-
12 ular synonym that you might come up with. I say that if we
13 look at that particular proposal that Delegate Harrington has
14 brought forth before us now, we have a proposal that gets away
15 from the reason for the critique that has been leveled against
16 the justice court in the past, and I say it's up to us here, as
17 delegates of the people, to make sure that we have provided a
18 total system of justice for the citizens of the state of Mon-
19 tana and we must complete it by enacting some type of provision
20 for the small claims court and this delegate proposal now fills
21 that particular task. Thank you, Mr. Chairman.
22 CHAIRMAN GRAYBILL: Mrs. Pemberton.
23 DELEGATE PEMBERTON: Thank you, Mr. Chairman. I come
24 from probably one of the smallest counties in the state of Mon-
25 tana, probably one of the most remote. We are a hundred miles

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from public transportation. We would be a hundred miles from a district judge. There is no way that I would possibly not have the people of these rural areas taken care of. In the now past Montana Plan, every place that it said, except for rural Montana, grass roots, jackrabbits, sagebrush -- it doesn't matter, that's it, that's what I represent. These specifications were put into the plan so that in case there was an attorney had to be there and was not available, a responsible person from the community could be appointed to fill his place. By eliminating or not using these in the Constitution, I feel the legislature will very well take care of the people of Montana the same that everyone here in this delegation would feel about it. Mr. Holland referred to a poll that he had a few minutes ago. I have the results of a poll here that he sent out and wrote and devised to all the attorneys in Montana, and of the five hundred and thirty-two who came -- who answered the polls and the figures came back, four hundred and thirty-four of them said that justice courts should not continue to be a constitutional court. Sixty-seven said they thought they should. I think this is a very good time of the season, it's a very good time in this Convention possibly to say, draw near with faith. I have faith in the legislature.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President, I rise in support of Delegate Harrington's motion. At home, I think ninety per-

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cent of the people are in favor of retaining the justice court in the Constitution, and I can tell you people this much, if you want to retain any kind of local court, small courts, in your areas, this is the place to put it. Don't leave it to the legislature.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. President, I move an amendment to Delegate Harrington's motion in the following words: In establishing any inferior court system the legislature shall require the judges thereof be elected by the people.

CHAIRMAN GRAYBILL: Will you write that down? Do I understand that's a substitute motion for the entire section sixteen that he proposes?

DELEGATE JOYCE: Yes, Mr. President. May I be heard?

CHAIRMAN GRAYBILL: Just a moment. Mr. Joyce has proposed a substitute motion for Mr. Harrington's motion, which was section sixteen on page eight. The substance of the substitute motion is: In establishing any inferior court system the legislature shall require that the judges thereof be elected by the people.

Mr. Joyce.

DELEGATE JOYCE: Mr. President, in support of this motion -- this proposed amendment which I just drew off the top of my head, listening to the arguments here, it seems to me that the problem is this. The justices of the peace around

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the state, apparently, and the people in the rural areas are concerned that they -- that there may be abolished justices of the peace as we presently know them. And, of course, no one in their right mind can do that because in the rural areas you must have magistrates and they can't always be -- magistrates, judges, whatever you want to call them -- someone to administer the petty criminal offenses and the small claims and to arraign people who are picked up on criminal offenses. But, it seems to me that using the word, justice of the peace, doesn't add anything to it. It ties into the legislature a particular term and the principle that it seems to me we established here this morning in the supreme court and in the district court is that these judges should be elected, and it seems to me my amendment should satisfy everybody in that it simply provides that the legislature can set up any inferior court system that it wishes. It may have two or three small claims courts, criminal, small criminal courts, arraigning courts -- whatever you want to call them. I would think in some counties the legislature might want to have four or five if it's a large area where people have to travel, but that the principle that we are trying to establish is that whatever kind of inferior court system the legislature set up, and I'm perfectly willing to let the legislature set up any kind of system that the people want as time goes on -- I just think that if we establish the principle that whoever mans these courts be elected by the people,

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why, then, we should have satisfied everybody.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise to oppose Mr. Joyce's motion. I feel that section sixteen, justice of the peace election, qualification, compensation and jurisdiction, is satisfactory. I feel this is -- I would stand on this particular -- as it is written in section sixteen. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, would Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: I shall.

DELEGATE ECK: Mr. Joyce, would this apply to municipal police courts?

DELEGATE JOYCE: Well, I think that the jurisdiction to establish -- this particular section, Mr. Harrington doesn't address himself to the so-called municipal police courts. I think that the legislature, having plenary powers, can set up police courts as they call them, municipal courts, with the municipalities and so I wouldn't think that either Mr. Harrington's proposal or mine would necessarily apply to that, but mine would come closer to it in that any inferior court system that is set up below the level of the district court, I simply provide that the judges thereof shall be elected. So, I don't

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know if I have answered your question but it seems to me that what the -- we are in the judicial article and Delegate Harrington's proposal pertains to justice courts which are county courts, as we currently know them, and I take it that's what he intends to maintain so you'd have one justice of the peace in each county and it neither -- his proposal does not address itself to the so-called police court.

CHAIRMAN GRAYBILL: Mr. Joyce, your answer does not seem to be an answer and, Mrs. Eck, the plain language here may seem to imply an answer of yes.

(Laughter)

DELEGATE ECK: Mr. Chairman, that's what I was afraid of and I would certainly oppose breaking down our system of police courts now and requiring municipalities to elect their police courts.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Joyce's motion to substitute in place of the section sixteen that Mr. Harrington has proposed a section which would say: In establishing any inferior court systems, the legislature shall require the judges thereof be elected by the people.

Mr. Wilson.

DELEGATE WILSON: I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call. So many as shall be in favor of that, please say -- please vote Aye on the voting machine. So many as are opposed, please vote

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No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The vote is closed. Please tally it.

Aasheim	-	Nay	Brown	-	Nay
Anderson, J.	-	Nay	Bugbee	-	Nay
Anderson, O.	-	Absent	Burkhardt	-	Nay
Arbanas	-	Nay	Cain	-	Aye
Arness	-	Nay	Campbell	-	Absent
Aronow	-	Nay	Cate	-	Absent
Artz	-	Nay	Champoux	-	Nay
Ask	-	Nay	Choate	-	Nay
Babcock	-	Nay	Conover	-	Nay
Barnard	-	Nay	Cross	-	Absent
Bates	-	Absent	Dahood	-	Nay
Belcher	-	Nay	Davis	-	Nay
Berg	-	Nay	Delaney	-	Nay
Berthelson	-	Nay	Driscoll	-	Nay
Blaylock	-	Nay	Drum	-	Nay
Blend	-	Nay	Eck	-	Nay
Bowman	-	Nay	Erdmann	-	Aye
Brazier	-	Aye	Eskildsen	-	Nay

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1	Etchart	-	Absent	Mansfield	-	Nay
2	Felt	-	Nay	Martin	-	Nay
3	Foster	-	Nay	McCarvel	-	Nay
4	Furlong	-	Absent	McDonough	-	Nay
5	Garlington	-	Aye	McKeon	-	Nay
6	Gysler	-	Aye	McNeil	-	Nay
7	Habedank	-	Absent	Melvin	-	Nay
8	Hanson, R. S.	-	Nay	Monroe	-	Nay
9	Hanson, R.	-	Nay	Murray	-	Nay
10	Harbaugh	-	Nay	Noble	-	Nay
11	Harlow	-	Nay	Nutting	-	Nay
12	Harper	-	Nay	Payne	-	Nay
13	Harrington	-	Nay	Pemberton	-	Nay
14	Heliker	-	Nay	Rebal	-	Nay
15	Holland	-	Aye	Reichert	-	Nay
16	Jacobsen	-	Aye	Robinson	-	Nay
17	James	-	Absent	Roeder	-	Nay
18	Johnson	-	Aye	Rollins	-	Nay
19	Joyce	-	Aye	Romney	-	Aye
20	Kamhoot	-	Nay	Rygg	-	Nay
21	Kelleher	-	Absent	Scanlin	-	Nay
22	Leuthold	-	Nay	Schiltz	-	Nay
23	Loendorf	-	Nay	Siderius	-	Nay
24	Lorello	-	Nay	Simon	-	Absent
25	Mahoney	-	Nay	Skari	-	Aye

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Sparks	-	Aye	Vermillion	-	Aye
Speer	-	Nay	Wagner	-	Nay
Studer	-	Nay	Ward	-	Nay
Sullivan	-	Nay	Warden	-	Nay
Swanberg	-	Nay	Wilson	-	Aye
Toole	-	Nay	Woodmansey	-	Aye
Van Buskirk	-	Aye	Mr. Chairman	-	Nay

CLERK HANSON: Mr. Chairman, sixteen Delegates voting Aye, seventy-three voting No.

CHAIRMAN GRAYBILL: Seventy-three Delegates having voted No and only sixteen Aye, that motion fails. We are now considering again Mr. Harrington's addition of a section sixteen, the text of which is on page eight and nine. Mr. Harrington, do you want to close?

DELEGATE HARRINGTON: Yes, Mr. Chairman. Fellow Delegates, I think this is a very, very important point we have come to in this Convention. We have worked on a people's representative. We have worked for probate lawyers and I think now -- we have called these progressive. Many of the people that have called these progressive now find that the justice of the peace courts or courts of this kind are not progressive. I say these are progressive and I say this is the last place where the people will have their voice and I hope the Delegates will vote in favor of this. Thank you, and I'd ask for a roll call vote on this, Mr. Chairman.

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CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. So many Delegates as shall be in favor of adding a section sixteen to the judicial article calling for justices of the peace, elections, qualifications, compensation and jurisdiction, as found on page eight and nine, vote Yes on the voting machine. So many as opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll close the ballot.

Aasheim	-	Aye	Berthelson	-	Nay
Anderson, J.	-	Aye	Blaylock	-	Nay
Anderson, O.	-	Absent	Blend	-	Nay
Arbanas	-	Nay	Bowman	-	Nay
Arness	-	Nay	Brazier	-	Aye
Aronow	-	Aye	Brown	-	Nay
Artz	-	Aye	Bugbee	-	Nay
Ask	-	Aye	Burkhardt	-	Nay
Babcock	-	Aye	Cain	-	Nay
Barnard	-	Aye	Campbell	-	Absent
Bates	-	Aye	Cate	-	Absent
Belcher	-	Aye	Champoux	-	Nay
Berg	-	Nay	Choate	-	Nay

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1	Conover	-	Aye	Jacobsen	-	Aye
2	Cross	-	Absent	James	-	Aye
3	Dahood	-	Aye	Johnson	-	Nay
4	Davis	-	Aye	Joyce	-	Aye
5	Delaney	-	Aye	Kamhoot	-	Aye
6	Driscoll	-	Aye	Kelleher	-	Absent
7	Drum	-	Nay	Leuthold	-	Aye
8	Eck	-	Nay	Loendorf	-	Nay
9	Erdmann	-	Aye	Lorello	-	Aye
10	Eskildsen	-	Aye	Mahoney	-	Aye
11	Etchart	-	Aye	Mansfield	-	Aye
12	Felt	-	Aye	Martin	-	Nay
13	Foster	-	Nay	McCarvel	-	Aye
14	Furlong	-	Absent	McDonough	-	Nay
15	Garlington	-	Nay	McKeon	-	Aye
16	Gysler	-	Aye	McNeil	-	Aye
17	Habedank	-	Absent	Melvin	-	Nay
18	Hanson, R. S.	-	Aye	Monroe	-	Nay
19	Hanson, R.	-	Aye	Murray	-	Aye
20	Harbaugh	-	Nay	Noble	-	Aye
21	Harlow	-	Nay	Nutting	-	Aye
22	Harper	-	Nay	Payne	-	Nay
23	Harrington	-	Aye	Pemberton	-	Nay
24	Heliker	-	Nay	Rebal	-	Aye
25	Holland	-	Aye	Reichert	-	Nay

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Robinson	-	Nay	Studer	-	Aye
Roeder	-	Nay	Sullivan	-	Aye
Rollins	-	Nay	Swanberg	-	Nay
Romney	-	Aye	Toole	-	Nay
Rygg	-	Nay	Van Buskirk	-	Aye
Scanlin	-	Nay	Vermillion	-	Nay
Schiltz	-	Aye	Wagner	-	Aye
Siderius	-	Aye	Ward	-	Aye
Simon	-	Absent	Warden	-	Nay
Skari	-	Nay	Wilson	-	Nay
Sparks	-	Nay	Woodmansey	-	Nay
Speer	-	Nay	Mr. Chairman	-	Nay

CLERK HANSON: Mr. Chairman, forty-seven Delegates voting Aye, forty-five voting No.

CHAIRMAN GRAYBILL: Forty-seven Delegates having voted Aye and forty-five having voted No, section sixteen, as shown on page eight and nine, is adopted. Mr. Leuthold, for what purpose do you arise?

DELEGATE LEUTHOLD: I'd like to make a motion.

CHAIRMAN GRAYBILL: What's the nature of your motion? I have some other motions up here to consider and your's isn't in writing, but go ahead. What's the nature of your motion?

DELEGATE LEUTHOLD: I'd like to move to reconsider our action on killing proposed section fourteen on probate attorneys and --

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CHAIRMAN GRAYBILL: Mr. Leuthold, you're out of order. We're not ready to proceed with reconsiderations. Now, if the Delegates will turn to page -- what's the page, Mr. -- fifty-five, sixty-five, there are two unanimous proposals on separate matters presented by the Judiciary Committee.

Mr. Holland.

CHAIRMAN GRAYBILL: Well, it would be section seventeen and eighteen, Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I move that when this committee does rise and report, after having under consideration section number seventeen and eighteen -- did you say? -- section number seventeen, that the same -- that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: This was assigned by the Chair to the Judiciary Committee. It is adopted unanimously in the same language as the previous Constitution. The entire committee voted that there was no need for any changes.

CHAIRMAN GRAYBILL: All right, let's take section seventeen, which is exemption laws. The legislative assembly shall enact liberal homestead and exemption laws. Is there any discussion?

(No response)

CHAIRMAN GRAYBILL: All those in favor of Mr. Holland's

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motion that when this committee does rise and report it shall recommend that the same be adopted, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: It is adopted. Now, we'll take section eighteen separately. (Reading) Perpetuities. No perpetuities shall be allowed, except for charitable purposes. (End reading) Is there any discussion of section eighteen?

(No response)

CHAIRMAN GRAYBILL: All in favor of section eighteen, of Mr. Holland's motion that when this committee does arise and report that it shall recommend that section eighteen be adopted, please say Aye.

DELEGATES: Aye.

DELEGATE ESKILDSEN: He didn't make it for eighteen. He only made it for seventeen.

CHAIRMAN GRAYBILL: I see.

DELEGATE ESKILDSEN: I move that when this committee does arise and report, after having had under consideration section eighteen, that the same be adopted.

CHAIRMAN GRAYBILL: Very well, on Mr. Eskildsen's motion that perpetuities be adopted when the committee does arise and report, all in favor say Aye.

DELEGATES: Aye.

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CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Excuse me. Now, the Chair has before it a motion by Mr. Harrington to amend section one and a motion by Mr. Blaylock -- or to reconsider section one, to reconsider section eight. If there are other motions to reconsider, get them in writing and send them up to the Chair. Mr. Harrington, do you think it's necessary now to reconsider section one?

DELEGATE HARRINGTON: Mr. Chairman, I feel that I can withdraw this at this time, due to the other --

CHAIRMAN GRAYBILL: Yours is withdrawn. Mr. Blaylock, you have a motion to reconsider section eight?

DELEGATE BLAYLOCK: Yes, Mr. Chairman, at line twenty-nine.

CHAIRMAN GRAYBILL: Page forty-three at line twenty-nine.

DELEGATE BLAYLOCK: Page forty-three at line twenty-nine.

CHAIRMAN GRAYBILL: Mr. Blaylock, do you want to make your motion?

DELEGATE BLAYLOCK: Yes. After the word, position,--

CHAIRMAN GRAYBILL: No, I want you to make your motion.

DELEGATE BLAYLOCK: Oh, I see. I move to reconsider

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section eight at line twenty-nine.

CHAIRMAN GRAYBILL: Mr. Blaylock, did you vote on the prevailing side?

DELEGATE BLAYLOCK: Yes, I did.

CHAIRMAN GRAYBILL: All right, having voted on the prevailing side, Mr. Blaylock wishes to amend section eight on page forty-three, and Mr. Blaylock, explain briefly your purpose.

DELEGATE BLAYLOCK: My purpose is to allow judges to run for other judicial positions. As it is now, and if you remember, I asked Mr. Berg if they were precluded from doing that and he said yes. So, at -- on line twenty-nine, after the word, position, strike the word -- strike the period and put in a comma and add this language: but -- have you got it? -- but a judge may file for another judicial position -- but a judge may file for another judicial position without forfeiture of the judicial position he holds -- without forfeiture of the judicial position he holds. I'll read the whole thing again: A judge may file for another judicial position without forfeiture of the judicial position he holds.

CHAIRMAN GRAYBILL: I take it, Mr. Blaylock, that it is your position in this proposal that he may not run for a different judicial office than a judicial one, but he may run for a judicial one without forfeit?

DELEGATE BLAYLOCK: Yes.

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CHAIRMAN GRAYBILL: All right, Mr. Blaylock, you've explained that. Do you feel it's necessary to explain it further before we vote on your motion to reconsider?

DELEGATE BLAYLOCK: No. I'm perfectly willing to vote on it.

CHAIRMAN GRAYBILL: Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, the motion is whether or not to reconsider section eight, and particularly the language on lines twenty-eight and twenty-nine on page forty-three of section eight, to allow an amendment such as that outlined by Mr. Blaylock. All those in favor of such motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it.

Mr. Blaylock.

DELEGATE BLAYLOCK: I'll be very brief. My feeling on this is that people who have been elected to the state legislature up here -- say they've been elected for four years -- if they're in mid-term and an election comes up, then they're free to file for another position, say, Congress or for a position in the executive, and if they lose, they don't forfeit their position, say, as senator, if we're in the bicameral or if we're in the unicameral, the position is for four years,

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they don't forfeit that. Then, if we, in the judicial area, if a judge, a district judge sitting, and there's an opening comes up on the supreme court and that district judge wishes to try for that position, and he's a good judge, why should we preclude him from running if he wants to. So, I have voted consistently to allow judges to run to be elected and I don't think we should preclude our district judges from their desire to serve on the Montana state supreme court.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, would Mr. Blaylock yield to a question?

DELEGATE BLAYLOCK: Yes.

DELEGATE DAVIS: Mr. Blaylock, now that we have justice of the peace in the Constitution, we are hopeful that they will be attorneys, too. Would your amendment exclude them from trying to move up in a like manner to the position of district court judge?

DELEGATE BLAYLOCK: No, my --

DELEGATE DAVIS: Would they be judge, or would you have to put justice of the peace in there?

DELEGATE BLAYLOCK: Well, I would think that if they were qualified to serve on the supreme court and they hold a judicial position, my language says they would not forfeit the judicial position that they hold.

CHAIRMAN GRAYBILL: Mr. Davis.

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DELEGATE DAVIS: Would you yield to another question?

DELEGATE BLAYLOCK: Yes.

DELEGATE DAVIS: I mean a justice of the peace wanting to run for the district court job, would he have to surrender his position?

DELEGATE BLAYLOCK: I wouldn't think so, no.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I can see some difficulty with this. I can see the possibility of what we call the Hugh Adair syndrome. A few years ago, when he was chief justice, the job of associate justice became open at a higher rate of pay than what he was getting as chief justice so he even resigned as chief justice and ran for associate justice to get the higher pay and eliminated Jimmy Freebourne as a result of it, which may have been good or bad, I take no stand on that. But, it seems to me you could get some vendettas going on in that supreme court and the more popular man would wipe out the one he didn't like. I'm not so sure I like it.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President, I support Mr. Blaylock on this. I was a little uneasy this morning when we passed over it and I thought perhaps I didn't fully understand it, but it seems to me that the district judges -- the district court should serve as a training ground for the high court and it would seem to me to be of great advantage, and I support

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Mr. Blaylock on this.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I rise in support of Mr. Blaylock's motion. I think there is -- we should leave an opening for a good judge, a trial judge, to move into the supreme court or if there's a lawyer justice of the peace that has the qualifications, he should be able to move on up to the district court or even the supreme court if he thinks he has a chance to win the election and has the qualifications.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I don't want to prolong this but I did work with Chet about -- with this amendment. He asked me about it. Actually, the vote had been taken. We were both concerned. We both feel that judges should be able -- that is, district judges should be able to, if they're capable, be elevated on up to the bench. They probably are the best qualified timber for the supreme court and it would be a shame to prevent them from doing that.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Blaylock's motion to amend section eight on page forty-three by adding to the sentence in line twenty-eight and twenty-nine the following words. The sentence now reads: Filing for another public -- elective public office results in forfeiture of a judicial position. He wants to put a comma. But a judge may file for another judicial position without forfeiture of

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judicial -- the judicial position he holds. So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: It's approved. Mr. Berg, will you make a motion that when this committee does arise and report, after having considered under -- after having under consideration section eight as amended, that the same be recommended for adoption?

DELEGATE BERG: I so move.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: Section eight is adopted. Now, Mrs. Mansfield, you have a request up here concerning section six and your request says you move to reconsider our action in killing the amendment of section six, page forty-two. Now, my notes show that section six, which begins at the bottom of forty-one -- terms and pay of judges -- was adopted as is. There was a motion this morning to amend it from six to eight and from four to six years, and that failed, so I see nothing in section six that isn't adopted. Now, what is your pleasure?

Mrs. Mansfield.

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DELEGATE MANSFIELD: Mr. President, this is the section on the terms that was killed this morning and I voted on the prevailing side and I want -- wish to reconsider this.

CHAIRMAN GRAYBILL: Well, I don't believe section six was killed. Now, somebody can correct me if I'm wrong. What section is it that you're after? I don't see any language --

DELEGATE MANSFIELD: It's under --

CHAIRMAN GRAYBILL: -- the first nine lines of page forty-two. That was adopted as is this morning.

DELEGATE MANSFIELD: Yes, it's line four, five, six and seven that we -- Mr. Garlington's amendment.

CHAIRMAN GRAYBILL: All right, what's the -- you want to -- you want to open section six so we can consider lines four, five, six and seven -- that's Mr. Garlington's amendment concerning making the supreme court six to eight and the justice -- district court four to six. Is that right?

DELEGATE MANSFIELD: Yes, Mr. President.

CHAIRMAN GRAYBILL: And having voted on the prevailing side, you wish the body to open consideration of section six, is that right?

DELEGATE MANSFIELD: Yes, Mr. President.

CHAIRMAN GRAYBILL: And, your purpose is to amend those four lines again?

DELEGATE MANSFIELD: Yes, sir.

CHAIRMAN GRAYBILL: Does anyone have any question

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about Mrs. Mansfield's motion to reconsider section six? Any debates?

(No response)

CHAIRMAN GRAYBILL: All in favor of reconsidering section six, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and the motion fails.

DELEGATE HARPER: Mr. Chairman, I call for a division of the house.

CHAIRMAN GRAYBILL: All right, we'll use the voting machines. All those in favor, say Aye -- vote Aye; and all opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The Chair appears to have been in error, fifty-six having voted to reconsider and forty-one having voted No, it will be reconsidered.

Mrs. Mansfield. Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President, I'd like to turn it over to Mr. Garlington.

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CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Garlington, I feel we acted hastily this afternoon in considering this matter and because it has such deep and long-range significance in the judicial structure that we are forging here, I just feel that we should look in our hearts and see whether, really, we are building a sound judiciary by keeping it under these completely minimum limitations which have been clearly pointed out. And, I urgently request that we take this step because I think it is completely compatible with our basic goal which is to construct for the people of Montana for the long-range future, as Mr. Aronow so well pointed out, a court which is really the salvation of the people's rights that we are endeavoring to construct in the rest of this Constitution.

CHAIRMAN GRAYBILL: The Chair will ascribe to you, Mr. Garlington, a motion to amend section six by changing the number six to eight on line five, and by changing the number four to six on line seven on page forty-two. That's what we did this afternoon. You will be -- I ascribe that motion to you. The sense of the motion is to raise the term of the supreme court from six to eight years and the district court from four to six years. Is there discussion?

Mrs. Blend.

DELEGATE BLEND: I would like to point out to you some cold, hard facts about eight and six year terms in view

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of the fact that we also voted to pay the campaign expenses of the judges, and I urge you to vote for this amendment to reduce the cost to the citizens on the campaign levels. Thank you.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman, having voted on the prevailing side this morning, I feel that this needed a little more debate and Mrs. Blend took the words out of my mouth before I got up because I feel the taxpayer needs a break on this also, so I support the eight and six.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, could I offer a substitute motion?

CHAIRMAN GRAYBILL: You could.

DELEGATE SCANLIN: Eliminate lines four, five, six and seven, and leave lines eight and nine to read: Terms of office for judges shall be provided by law.

CHAIRMAN GRAYBILL: Mr. Scanlin's substitute motion is to take the terms of the supreme court and district court judges out of the article and leave the sentence in that says: Terms of office for other judges shall be provided by law. Do you want to take out the word, other, and say: Terms of office for judges shall be provided by law?

DELEGATE SCANLIN: That's right, Mr. Chairman.

CHAIRMAN GRAYBILL: In other words, Mr. Scanlin's substitute motion would let the legislature set the terms of

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office for the supreme court and district court and other judges. Is there discussion? Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, could I ask Mr. Scanlin a question?

CHAIRMAN GRAYBILL: Mr. Scanlin, will you yield?

DELEGATE SCANLIN: I yield, Mr. Chairman.

DELEGATE ROD HANSON: Mr. Scanlin, is your purpose here to cut the cost for the taxpayer even further by having the judges elected for life?

DELEGATE SCANLIN: I trust the legislature.

CHAIRMAN GRAYBILL: Is there further discussion? Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, for a long time during this session I have been noticing a predeliction on the part of the membership to pass the buck along all the way. We are going to have a commission do this, a committee do that, and we are washing our hands of it just like Pontius Pilate washed his hands of everything that came before him. I want to say that if you push these judges of the supreme court into a place where they are going to sit for eight years and the district judges for six years, some of us are not even going to live out their first term, and the rest of the people are not even going to know who the judges are by the time they come around for election the next time. I think we are doing the people of Montana a disservice by taking these people away from

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their control. You elect a man who is on the supreme court now -- any of them -- to another eight year term and he's had it.

(Laughter)

DELEGATE ROMNEY: I want to tell you, he's not only had it but the people of Montana have had it. I think that Mr. Scanlin is doing a service for the people of Montana if he can turn this over to the legislature, just as we're turning almost everything else over to them.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President and Delegates, I don't want to talk on Mr. Scanlin's proposal but if a man is elected judge when he's sixty -- fifty -- sixty-nine years old, in eight years he'd be seventy-seven.

CHAIRMAN GRAYBILL: Mr. Eskildsen, you have the mike.

DELEGATE ESKILDSEN: Mr. Chairman, members, I'd just like to point out that when we finally get to voting on Order of Business Number Five that -- and I'm referring to what Mrs. Blend has said -- in order to save a little money, maybe we should pass this for eight years. I'd just like to point out to you that when we get to Order of Business Number Five, it's very possible, very possible that that one particular section that we're going to pour the old money into the campaign fund might die in this body. It was a pretty close vote. And I imagine that the newspapers will pick this up quite readily and we'll be getting some little response from home pretty soon

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about supporting the campaign fund for the poor old judges. So I wouldn't let that be an item that would make my vote change one way or the other. I'd just look at the fact that eight years is too long as far as I'm concerned.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: I also think eight years is a little too long. For instance, if we do not like the judges or if they do --

CHAIRMAN GRAYBILL: A little louder.

DELEGATE SIDERIUS: -- if they do not do what we think they should do, why, we can get rid of them at the end of six years.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in opposition to this amendment and I would certainly -- I did not vote on the prevailing side for the campaign funds but I would certainly urge that we reconsider that, also, and not use this as an influence on our vote in this issue. Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, in connection with Mr. Scanlin's suggestion that we turn this over to the legislature, I refer to volume five of our production which has a number of comparable constitutions and I find that the ones of Alaska, Hawaii, Michigan, New Jersey, Puerto Rico, and the model, which were the ones that were provided by the prepara-

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tory commission as an example for us, all do contain a term priviso for the justices of the supreme court. So, it is not the common pattern to buck it over to the legislature but to reach a decision on the subject. With respect to the comment that eight years is too long, I just want to remind the Delegates that, based on the experience of the rest of the states around the United States, which I think are not altogether different than Montana, they do not seem to have problems over going to terms that run from eight on up to fifteen years to life. If we timidly reach as far as eight we will really have not gone too far.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Not that it has a lot to do with our Convention, what's being done in North Dakota, but I find in their newly written document they provide ten years for a supreme court justice and six on their district court. I really do think it has some bearing in this Convention, though, that it would give us a better quality of judges when you consider that he has to seriously consider giving up a practice to run for a term that may be considered in his opinion a little short at six years, or four in the case of a district judge. Now, I do favor six and eight years on these terms. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, I would like to point out that in the North Dakota proposal they are elected by the

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people. Here you have a committee that is going to recommend who is going to be judge and then the governor is going to appoint him and you're not going to get another look at him, as far as your wanting your right to vote, for eight years or six years as the case may be.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, whatever number we adopt, the question is whether the legislature ought to do it or the Constitution ought to do it, and I think the Constitution ought to do it and I think we ought to get on with that question.

CHAIRMAN GRAYBILL: Very well, the question is on Mr. Scanlin's motion to delete lines four through seven, which means deleting the terms of the supreme court justice and the district court justice and saying the terms of office for judges shall be provided by law. So many as are in favor of Mr. Scanlin's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The motion fails. Now, we are discussing Mr. Garlington's motion to raise supreme court judges from six to eight and district court judges from four to six. Is there further discussion?

Mr. Martin -- are you standing, Mr. Martin?

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DELEGATE MARTIN: No, I'm sorry.

CHAIRMAN GRAYBILL: Mr. Eskildsen, were you standing?

DELEGATE ESKILDSEN: I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well, so many as are in favor of raising the term of the supreme court justices to eight and the district court justices to six in section six, please vote Aye, and those opposed vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the vote.

Aasheim	-	Nay	Berg	-	Aye
Anderson, J.	-	Nay	Berthelson	-	Nay
Anderson, O.	-	Nay	Blaylock	-	Aye
Arbanas	-	Aye	Blend	-	Aye
Arness	-	Nay	Bowman	-	Aye
Aronow	-	Nay	Brazier	-	Nay
Artz	-	Nay	Brown	-	Aye
Ask	-	Nay	Bugbee	-	Aye
Babcock	-	Nay	Burkhardt	-	Aye
Barnard	-	Absent	Cain	-	Nay
Bates	-	Nay	Campbell	-	Aye
Belcher	-	Nay	Cate	-	Aye

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1	Champoux	-	Aye	Heliker	-	Nay
2	Choate	-	Aye	Holland	-	Nay
3	Conover	-	Aye	Jacobsen	-	Aye
4	Cross	-	Aye	James	-	Aye
5	Dahood	-	Aye	Johnson	-	Nay
6	Davis	-	Nay	Joyce	-	Aye
7	Delaney	-	Aye	Kamhoot	-	Nay
8	Driscoll	-	Nay	Kelleher	-	Absent
9	Drum	-	Aye	Leuthold	-	Nay
10	Eck	-	Aye	Loendorf	-	Aye
11	Erdmann	-	Nay	Lorello	-	Aye
12	Eskildsen	-	Nay	Mahoney	-	Nay
13	Etchart	-	Nay	Mansfield	-	Aye
14	Felt	-	Nay	Martin	-	Aye
15	Foster	-	Aye	McCarvel	-	Aye
16	Furlong	-	Aye	McDonough	-	Aye
17	Garlington	-	Aye	McKeon	-	Nay
18	Gysler	-	Nay	McNeil	-	Nay
19	Habedank	-	Aye	Melvin	-	Aye
20	Hanson, R. S.	-	Nay	Monroe	-	Aye
21	Hanson, R.	-	Nay	Murray	-	Aye
22	Harbaugh	-	Nay	Noble	-	Nay
23	Harlow	-	Nay	Nutting	-	Nay
24	Harper	-	Aye	Payne	-	Aye
25	Harrington	-	Nay	Pemberton	-	Aye

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Rebal	-	Nay	Speer	-	Aye
Reichert	-	Aye	Studer	-	Aye
Robinson	-	Aye	Sullivan	-	Nay
Roeder	-	Aye	Swanberg	-	Nay
Rollins	-	Aye	Toole	-	Aye
Romney	-	Nay	Van Buskirk	-	Nay
Rygg	-	Aye	Vermillion	-	Nay
Scanlin	-	Nay	Wagner	-	Aye
Schiltz	-	Nay	Ward	-	Aye
Siderius	-	Nay	Warden	-	Nay
Simon	-	Absent	Wilson	-	Nay
Skari	-	Aye	Woodmansey	-	Nay
Sparks	-	Aye	Mr. Chairman	-	Nay

CLERK HANSON: Mr. Chairman, forty-nine Delegates voting Aye, forty-eight voting No.

CHAIRMAN GRAYBILL: Forty-nine Delegates having voted Aye and forty-eight having voted No, the terms of the supreme court judges are now eight and the district court judges now six. Mr. Berg, will you make a motion -- or Mr. Holland -- will one of you make a motion that we readopt section seven -- section six?

Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that this committee, having had under consideration section six of the minority report, as amended, that when it does rise and report

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that it pass and adopt and approve the same.

CHAIRMAN GRAYBILL: So many as shall be in favor of adopting section six, as amended, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it.

DELEGATE AASHEIM: Mr. President.

CHAIRMAN GRAYBILL: Mr. Aasheim, for what purpose do you arise?

DELEGATE AASHEIM: I'm rising to reconsider our action in adopting section eight.

CHAIRMAN GRAYBILL: Well, you've got to send it up here in writing to me so that you can get in line. Mr. Conover, would you like to explain what you want to do with section sixteen? Section sixteen is the justices of the peace, adopted forty-seven to forty-five. Mr. Conover, do you want do make a motion to reconsider section sixteen, is that right?

DELEGATE CONOVER: Mr. President, having voted on the prevailing side, I would like to make a motion that we reconsider section sixteen. Thank you, Mr. President.

CHAIRMAN GRAYBILL: And what is your purpose in -- you may state your purpose for the body, shortly.

DELEGATE CONOVER: I voted for this but my purpose for this was that I feel that in the general government that

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this article will come up under this Local Government that will take care of this.

CHAIRMAN GRAYBILL: In other words, if your motion prevails you will make a motion to delete section sixteen, is that right?

DELEGATE CONOVER: Yes, sir.

CHAIRMAN GRAYBILL: Very well, is there further discussion?

(No response)

CHAIRMAN GRAYBILL: The question arises on the motion of Mr. Conover that we reconsider section sixteen concerning justices of the peace.

DELEGATE HARRINGTON: May we have a roll call on that, please?

CHAIRMAN GRAYBILL: So many as are in favor of that, please vote Aye on the voting machine; so many as are opposed, vote No.

DELEGATE BERG: Mr. Chairman.

CHAIRMAN GRAYBILL: Just a minute. Do you want to discuss it?

DELEGATE BERG: I want to -- I would like to ask Mr. Ask to yield to a question.

CHAIRMAN GRAYBILL: All right, we'll cancel the vote. Mr. Clerk, cancel the vote.

DELEGATE BERG: Have you included justices of the

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peace in your proposed Local Government section?

DELEGATE ASK: No, we have not. We considered that as part of the judiciary article and we never even considered it as I can recall.

DELEGATE BERG: But you have considered every other county office?

DELEGATE ASK: Yes, including district -- clerk of the district court and county attorneys, we included them.

DELEGATE BERG: And would you be willing, then, to include the justices of the peace as a county office with the other county offices?

DELEGATE ASK: Well, I don't know if I can speak for the committee but I assume we could consider it at that time.

DELEGATE BERG: Thank you.

CHAIRMAN GRAYBILL: Very well, the question now arises on a roll call vote on whether or not to reconsider section sixteen, Mr. Conover's motion to reconsider section sixteen. All those in favor vote Aye; opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, record the vote.

Aasheim - Nay Anderson, J. - Nay

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1	Anderson, O.	-	Nay	Cross	-	Aye
2	Arbanas	-	Aye	Dahood	-	Nay
3	Arness	-	Aye	Davis	-	Nay
4	Aronow	-	Nay	Delaney	-	Nay
5	Artz	-	Nay	Driscoll	-	Nay
6	Ask	-	Nay	Drum	-	Aye
7	Babcock	-	Nay	Eck	-	Aye
8	Barnard	-	Aye	Erdmann	-	Aye
9	Bates	-	Absent	Eskildsen	-	Absent
10	Belcher	-	Aye	Etchart	-	Nay
11	Berg	-	Aye	Felt	-	Nay
12	Berthelson	-	Aye	Foster	-	Aye
13	Blaylock	-	Aye	Furlong	-	Aye
14	Blend	-	Aye	Garlington	-	Aye
15	Bowman	-	Aye	Gysler	-	Nay
16	Brazier	-	Nay	Habedank	-	Aye
17	Brown	-	Aye	Hanson, R. S.	-	Nay
18	Bugbee	-	Aye	Hanson, R.	-	Nay
19	Burkhardt	-	Aye	Harbaugh	-	Aye
20	Cain	-	Aye	Harlow	-	Aye
21	Campbell	-	Aye	Harper	-	Aye
22	Cate	-	Aye	Harrington	-	Nay
23	Champoux	-	Aye	Heliker	-	Aye
24	Choate	-	Aye	Holland	-	Nay
25	Conover	-	Aye	Jacobsen	-	Nay

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1	James	-	Aye	Robinson	-	Aye
2	Johnson	-	Aye	Roeder	-	Aye
3	Joyce	-	Aye	Rollins	-	Aye
4	Kamhoot	-	Nay	Romney	-	Nay
5	Kelleher	-	Absent	Rygg	-	Aye
6	Leuthold	-	Nay	Scanlin	-	Aye
7	Loendorf	-	Aye	Schiltz	-	Nay
8	Lorello	-	Nay	Siderius	-	Nay
9	Mahoney	-	Nay	Simon	-	Absent
10	Mansfield	-	Nay	Skari	-	Aye
11	Martin	-	Nay	Sparks	-	Aye
12	McCarvel	-	Nay	Speer	-	Aye
13	McDonough	-	Aye	Studer	-	Aye
14	McKeon	-	Nay	Sullivan	-	Nay
15	McNeil	-	Nay	Swanberg	-	Nay
16	Melvin	-	Aye	Toole	-	Aye
17	Monroe	-	Aye	Van Buskirk	-	Aye
18	Murray	-	Nay	Vermillion	-	Nay
19	Noble	-	Nay	Wagner	-	Nay
20	Nutting	-	Nay	Ward	-	Nay
21	Payne	-	Aye	Warden	-	Aye
22	Pemberton	-	Aye	Wilson	-	Aye
23	Rebal	-	Nay	Woodmansey	-	Aye
24	Reichert	-	Aye	Mr. Chairman	-	Aye

25 CLERK HANSON: Mr. Chairman, fifty-five Delegates

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voting Aye, forty-one voting No.

CHAIRMAN GRAYBILL: Fifty-five Delegates having voted Aye, we will reconsider section sixteen.

Mr. Conover. Mr. Conover.

DELEGATE CONOVER: Mr. President, my purpose with this is like -- has been mentioned and if it's possible, I'm for electing a justice of the peace. And, if it's possible, I'd like to have it brought up in the Local Government if that is -- can be done, Mr. Ask.

CHAIRMAN GRAYBILL: Well, are you making a motion to delete section sixteen as we adopted it?

DELEGATE CONOVER: Yes, I want to delete section sixteen -- all of section sixteen.

CHAIRMAN GRAYBILL: Very well, the motion is on the deletion of section sixteen. Have you got anything -- all right, -- Mr. Harrington.

DELEGATE HARRINGTON: As I see it now, we're going around and around and around, and every vote that we have two or three votes difference, we're going to reconsider. Now, maybe if we come back an hour or two from now, maybe we can reconsider again. In other words, this last vote was fairly close so maybe we could come back in another hour for the third time. Now, the only problem we're running into here with this Convention, it seems, is if you pass something the first time and if it's fairly close the next time we can reverse it, so

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it's better to lose it the first time and come back and try her the second time, it seems like. In other words, this seems to be the game plan by some of the Delegates here. Now, I oppose the motion by Delegate Conover. I feel that we are putting something off that could be done right now and should be done now. It's part of the judicial system and should be remained part of the judicial system, and I just -- I just can't imagine how people on the outside looking at this type of Convention -- we vote for something, then we reject it and we turn around and vote for it again. Now, we should start making up our minds one way or another. Either we're going to accept something or reject it, but this idea of bringing things up over and over and over again, I can't see how we're possibly going to get anywhere with this -- not here or outside the Convention when we leave. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I think if you put the justice of the peace in with the other county offices, you will be treating him then equally with every other designated county office. Now, we recognize him as a county officer. We recognize that they are going to be a community officer. We -- in the local government provisions, there's provisions for options within each community as to how they want to treat or continue these offices. I think the people who live with the justice of the peace in their individual areas ought to be able

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to deal with them there and I do know there will be a considerable difference of attitute in an urban community as compared to a rural community. I think this would be simply giving to the people the same right in the treatment of the justice of the peace as it would be with any other county office. I think we ought to seriously consider this. I don't know of any reason why we should segregate and designate this purely county, local office from any other office that is contained in local government. Now, I recognize, of course, that justices of the peace have always been considered judicial offices and I think they should be, and I think their dignity should be achieved, but I do not believe in making them constitutional offices as we have already done. I recognize now the sense of the Convention to do this, but I think you should put them in the communities where they really belong, just like any other office.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I oppose the motion for the reason that I think the type of magistrate we now designate justice of the peace should stay within the judiciary. His court is going to represent the lowest level, the most accessible level to the general public. We are going to elevate that particular judge, justice of the peace, or magistrate to a level of competency never before experienced in the state of Montana. His jurisdiction is going to be expanded and the problems he is going to solve are going to be problems that

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have not been presented to justice courts in the past. He is going to be part of the judicial system. He is going to be immediately below the district judge. I assume that in his wisdom on occasion he will seek advice and guidance from the district court. He is part of that arm of government and that is where he belongs and he should stay within the judiciary system as it is outlined and constructed by this Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: The statement by Mr. Ask that the Local Government would consider putting them in, of course, is -- as Mr. Ask well knows, I don't think he intends this late in the Convention at all. The committee report of Local Government has been completed and forwarded to the Committee of the Whole and now, if I remember correctly, it's on general orders. That committee no longer has any power to do anything. There's no justice of the peace mentioned in there. I want to speak about section sixteen which this -- I can't remember the name, I think it's section sixteen which has been adopted already by this. What we attempted to do is upgrade the office of JP. We had testimony that these JPs were holding court in railroad cars, in their automobiles, on their tractors, anywhere they could find it -- someone would be taken before them by a peace officer and the justice would be dispensed right then and there. We had testimony that these men weren't train-

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ed, that they didn't have the proper qualifications for the office. We considered eliminating them completely and decided to upgrade the office. First, to restrict -- to make -- to lower the number from a minimum of four to a minimum of one but provide that with qualifications, training -- he would have to have such qualifications and training as would be provided by law, by the legislature, and have a monthly compensation rather than a fee system. And he would also hold his office for four years and it also in there this is provided that there shall be such facilities for such justice so that their duties may be performed in dignified surroundings. We also provided that they shall have such original jurisdiction. We also provided that they will not have trial jurisdiction in criminal cases. We provide everything that should be provided in a judicial article. Now, I don't know who convinced the Delegates here to change their mind and we're going to suddenly spring over to Oscar Anderson's -- take it out of the judicial article -- take a court out of the judicial article, suddenly spring over there -- but it's obviously people who don't want a justice court because once we get over to Oscar Anderson where they don't have the proper procedure, someone's going to make an amendment that we add that to county government. It's not a county office. It's a judicial office. You are going to eliminate all the good things this committee has done just because the vote was close and, as Mr. Harrington once said,

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someone has come up here and decided it was a close vote and now we're going to get you to change your mind based on what -- the question asked of Mr. Ask, could you include it into the Local Government. If this is all the thinking this Convention is going to do, if this is all the qualifications they're going to provide for a JP, then I suggest that they'd better forget about anything about the judicial article and just put it all over in Local Government and let the county commissioners set up the whole thing. I urge you resist the motion to reconsider.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes, Mr. President, I rise in support of the motion by Mr. Conover to delete section sixteen. It's amazing to me how anyone, if you've read the judiciary report, number fourteen, could arrive at the conclusion that you should lock into a constitution the JP system. It, in detail, goes into what happened in thirty-one states and how they either had to amend their constitution, have a constitutional convention or something so they can get this locked in JP system out. Since 1945 the legislature in Montana has been trying to update and revamp the JP system. They have failed thus far. I submit that if the JP system is as good as a great many of you think it is, it doesn't need to be locked into the Constitution because the legislature will continue it. If it's not, leave them free to do something else. In section sixteen we are mandating that there be a JP elected in each county. In

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section one we provided that there shall be a supreme court and district court and any other courts that the legislature may decide to establish. O.K. Look at what you have done. They may establish a system of JP courts, a system of small claims courts, a system of magistrate courts, but they have to have a JP system. Now, if they do not like the JP system they can create another system. You have left it to the legislature to establish the qualifications, the jurisdiction, the salary, et cetera, of the JP courts. If they do not like the JP courts, we may have a JP elected in each county of the state of Montana receiving two dollars a year salary. The qualifications--they may have to be PHDs. This is unreasonable. You are mandating that they do something, yet you're trying to give them flexibility. The North Dakota constitution was referred to a while ago. Their judicial article makes no mention of the JP system. It's just inconceivable to me that we should embark on this path that we have been embarking on -- no change at all, keep the status quo. It's just -- I just can't believe it.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to support Delegate Conover's motion to delete section sixteen. As you may know, I am a practicing attorney in Missoula and I practice before Judge E. Gardiner Brownlee, who is a close friend of mine and who has worked more than any judge, any justice in the state with the justices of the peace. He has had more

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seminars and he has written a book that is used by all the justices of the peace and he certainly has their respect. He, more than any man, has supported the justices of the peace and I have been in close contact with him ever since the Montana Plan was first proposed. He opposed the Montana Plan. I discussed it with him in detail and I discussed what he felt about deleting references to the justices of the peace in the new proposed Constitution. He said that it was his personal opinion that he would favor and that the associations of the justices of the peace would, with his strong recommendation, would favor deletion of reference to them in the Constitution, without abolishing the office and letting the legislature set their qualifications and their continuance. I feel that this man who has their respect, if he can say this, if he believes this is the right thing to do in the new Constitution, I certainly support him and I think we should back him up, and I think that anyone who feels that this in itself is going to abolish the justices of the peace system does not have the faith that E. Gardiner Brownlee has in our legislature, so I strongly urge that we accept Delegate Conover's proposal. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: There is only one statistic. I don't care whether you leave the justices in or out of the Constitution but I think in all fairness that all of our statistic people forget the fact that in 1961 the people voted on

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this and left the justice of the peace in, so you may ignore them if you want but they'll let you know how they feel.

CHAIRMAN GRAYBILL: Very well, Mr. Harrington, do you wish to close. Wait a minute.

Mrs. Reichert.

DELEGATE REICHERT: I'd like to reiterate again. It was lost only by one thousand one hundred and seventy-eight votes. But, as far as this, I am in favor of deletion and the reason that reconsideration was made was that eight people were absent from this chamber, and in a vote as close as forty-seven to forty-five, I think that those who are not here deserve the right to vote.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I avoided discussing this when the question was first before us but I rise in opposition to the proposal of Delegate Conover. During the earlier debates, someone said that no one in their right mind would think that the inferior court system would be abolished, so let's leave it up to the legislature. Now, there might be some people who would find a flaw in the combination of those two statements and particularly people from perhaps the jackrabbit counties where they're not going to have many legislators to represent them. They might say, that's not exactly the crowd we want to leave this to. And, they might think, as has been recently mentioned as an argument supposedly in support of this proposition--

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we are told that the legislature has wrestled with this problem for years and years and years, trying to bring it up to better standards and they can't get it done. But, now we're saying, leave it up to them. Members of the committee, or of the Convention, I say, take a good look at the language that we are particularly voting on and think about our committee system. This came from the majority report of the Committee on the Judiciary. It was given great consideration. It is drafted in a way I had not thought anyone could propose a modernization of the justice of the peace system in Montana, which lays down a framework and yet leaves sufficient flexibility for the legislature so it can use it to the extent that it is proper and can substitute something else to the extent that they may need it. I have had the unfortunate experience, too, of trying in the legislature to improve upon our justice of the peace system and failed, and I tell you, they can bring a lot of heat to bear, sure, on the electorate. They can bring more heat to bear, I guarantee you, on the members of a legislative body. They've got them pinned down in one spot where they can cinderize their fire on them, and they can bring it in from all sides, and these things seem to be going pretty good in the legislature battles and then all of a sudden the support falls away and you don't get any improvement. If you don't go for this, I can just about tell you that the best hope you'll get will be that either the law school or the bar association

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will come up with some kind of a proposal, and it probably will not involve the election of the justice of the peace. One to a county? My goodness, I think we're doggone lucky that we had a committee that labored and produced something this admirable and that we now have a chance to reaffirm the decision that we made and leave it in the Constitution. It certainly improves our chances of success and it's a small price to pay if you think it violates something. I urgently ask you to exercise this openness that we talk about and open your minds now. Look at what's before you and decide whether it's meritorious or not.

CHAIRMAN GRAYBILL: Mr. Harrington, do you want to close?

DELEGATE HARRINGTON: We've heard that the North Dakotans did something -- matter of fact, I think that since we've been in this Convention I've heard more about North Dakota than I think what we've done ourselves, and I have all the admiration in the world for Judge Brownlee and he feels this is not the thing to do, but I think it basically comes down to the point that we are writing this Constitution for the people, and I think it all -- as we go around the horn on this, you are going to find that the majority of the people throughout the state feel that we should have these justices of the peace courts, and I think that any Delegate here will find it through communication with the people back home -- they'll find the words, the people's court, the poor man's court -- all of these

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names are used. And, again, I plead the case of the justice of the peace court, that they remain. We have set up a new type of court. We have put qualifications on them. I can't see why this Convention will turn this down. If we do turn them down, I think we're going to have a little problem with it. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Conover's motion to reconsider section sixteen, which passed, and then upon his motion to delete section sixteen as adopted.

DELEGATE McNEIL: I would like to ask for a roll call.

CHAIRMAN GRAYBILL: Very well, so many as shall be in favor of deleting section sixteen, please vote Aye. So many as shall be opposed, please vote No.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: We are in the middle of a vote, Mr. -- for what purpose do you arise?

DELEGATE AASHEIM: I'd like to have you explain the motion. I'm not clear.

CHAIRMAN GRAYBILL: All right, the motion is that Mr. Conover moved that we delete section sixteen. Now, we passed a while ago section sixteen which puts justices of the peace in the Constitution. The motion is to delete that out of the Constitution. If you're in favor of the motion, vote Yes to delete. If you're against the motion, vote No to retain it in

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the Constitution.

DELEGATE AASHEIM: You said that the motion was also to reconsider and I thought we had passed on the reconsideration.

CHAIRMAN GRAYBILL: We passed the motion to reconsider and now if you want to vote to delete section sixteen, you vote Aye; if you want to vote to leave it in, you vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, tally the vote.

Aasheim	-	Nay	Berg	-	Aye
Anderson, J.	-	Nay	Berthelson	-	Aye
Anderson, O.	-	Nay	Blaylock	-	Aye
Arbanas	-	Aye	Blend	-	Aye
Arness	-	Aye	Bowman	-	Aye
Aronow	-	Nay	Brazier	-	Nay
Artz	-	Nay	Brown	-	Aye
Ask	-	Nay	Bugbee	-	Aye
Babcock	-	Nay	Burkhardt	-	Aye
Barnard	-	Nay	Cain	-	Aye
Bates	-	Nay	Campbell	-	Aye
Belcher	-	Nay	Cate	-	Nay

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1	Champoux	-	Aye	Heliker	-	Aye
2	Choate	-	Aye	Holland	-	Nay
3	Conover	-	Aye	Jacobsen	-	Nay
4	Cross	-	Aye	James	-	Nay
5	Dahood	-	Nay	Johnson	-	Nay
6	Davis	-	Nay	Joyce	-	Nay
7	Delaney	-	Nay	Kamhoot	-	Nay
8	Driscoll	-	Nay	Kelleher	-	Absent
9	Drum	-	Nay	Leuthold	-	Nay
10	Eck	-	Aye	Loendorf	-	Aye
11	Erdmann	-	Nay	Lorello	-	Nay
12	Eskildsen	-	Nay	Mahoney	-	Nay
13	Etchart	-	Nay	Mansfield	-	Nay
14	Felt	-	Nay	Martin	-	Aye
15	Foster	-	Aye	McCarvel	-	Nay
16	Furlong	-	Aye	McDonough	-	Aye
17	Garlington	-	Aye	McKeon	-	Nay
18	Gysler	-	Nay	McNeil	-	Nay
19	Habedank	-	Aye	Melvin	-	Aye
20	Hanson, R. S.	-	Nay	Monroe	-	Aye
21	Hanson, R.	-	Nay	Murray	-	Nay
22	Harbaugh	-	Nay	Noble	-	Nay
23	Harlow	-	Aye	Nutting	-	Nay
24	Harper	-	Nay	Payne	-	Aye
25	Harrington	-	Nay	Pemberton	-	Aye

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Rebal	-	Nay	Speer	-	Aye
Reichert	-	Aye	Studer	-	Nay
Robinson	-	Aye	Sullivan	-	Nay
Roeder	-	Aye	Swanberg	-	Nay
Rollins	-	Aye	Toole	-	Aye
Romney	-	Nay	Van Buskirk	-	Nay
Rygg	-	Aye	Vermillion	-	Aye
Scanlin	-	Aye	Wagner	-	Nay
Schiltz	-	Nay	Ward	-	Nay
Siderius	-	Nay	Warden	-	Aye
Simon	-	Absent	Wilson	-	Aye
Skari	-	Aye	Woodmansey	-	Aye
Sparks	-	Aye	Mr. Chairman	-	Aye

CLERK HANSON: Mr. Chairman, forty-five Delegates voting Aye, fifty-three voting No.

CHAIRMAN GRAYBILL: Forty-five Delegates having voted Aye, fifty-three having voted No, the motion fails and section sixteen is retained. Mr. Harrington, do you want to make a motion that when this committee rises and reports, after having under consideration section sixteen, the same shall be recommended for adoption?

DELEGATE HARRINGTON: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, all in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

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DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: So ordered. Now, Mr. Scanlin, you have a motion here to reconsider section fourteen. Do you wish to make that motion?

DELEGATE SCANLIN: Mr. Chairman, in courtesy to my good friend and new roommate here, having voted on the prevailing side, I wish to reconsider section fourteen--Mr. Archie Wilson's proposal on the probate attorney and I'll just simply to call for a roll call vote. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the motion is by Mr. Scanlin to reconsider section fourteen. Now, section fourteen is the probate attorney which was defeated a while ago and Mr. Scanlin, having voted on the prevailing side, wants to reconsider section fourteen. He wants a roll call vote. All those in favor of reconsidering section fourteen, vote Aye; all those opposed vote No. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please tally the vote.

Aasheim	-	Aye	Arness	-	Nay
Anderson, J.	-	Aye	Aronow	-	Nay
Anderson, O.	-	Nay	Artz	-	Nay
Arbanas	-	Nay	Ask	-	Nay

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1	Babcock	-	Nay	Eck	-	Aye
2	Barnard	-	Aye	Erdmann	-	Aye
3	Bates	-	Aye	Eskildsen	-	Aye
4	Belcher	-	Aye	Etchart	-	Nay
5	Berg	-	Nay	Felt	-	Nay
6	Berthelson	-	Aye	Foster	-	Aye
7	Blaylock	-	Nay	Furlong	-	Aye
8	Blend	-	Aye	Garlington	-	Aye
9	Bowman	-	Nay	Gysler	-	Aye
10	Brazier	-	Nay	Habedank	-	Nay
11	Brown	-	Nay	Hanson, R. S.	-	Nay
12	Bugbee	-	Nay	Hanson, R.	-	Absent
13	Burkhardt	-	Nay	Harbaugh	-	Nay
14	Cain	-	Nay	Harlow	-	Aye
15	Campbell	-	Nay	Harper	-	Aye
16	Cate	-	Nay	Harrington	-	Aye
17	Champoux	-	Nay	Heliker	-	Nay
18	Choate	-	Absent	Holland	-	Nay
19	Conover	-	Nay	Jacobsen	-	Nay
20	Cross	-	Nay	James	-	Nay
21	Dahood	-	Nay	Johnson	-	Nay
22	Davis	-	Nay	Joyce	-	Nay
23	Delaney	-	Aye	Kamhoot	-	Aye
24	Driscoll	-	Nay	Kelleher	-	Absent
25	Drum	-	Nay	Leuthold	-	Aye

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Loendorf	-	Nay	Romney	-	Nay
Lorello	-	Nay	Rygg	-	Aye
Mahoney	-	Nay	Scanlin	-	Aye
Mansfield	-	Nay	Schiltz	-	Nay
Martin	-	Nay	Siderius	-	Aye
McCarvel	-	Nay	Simon	-	Absent
McDonough	-	Nay	Skari	-	Aye
McKeon	-	Nay	Sparks	-	Nay
McNeil	-	Nay	Speer	-	Absent
Melvin	-	Nay	Studer	-	Aye
Monroe	-	Aye	Sullivan	-	Nay
Murray	-	Nay	Swanberg	-	Nay
Noble	-	Nay	Toole	-	Nay
Nutting	-	Nay	Van Buskirk	-	Nay
Payne	-	Nay	Vermillion	-	Nay
Pemberton	-	Nay	Wagner	-	Nay
Rebal	-	Nay	Ward	-	Nay
Reichert	-	Absent	Warden	-	Nay
Robinson	-	Nay	Wilson	-	Aye
Roeder	-	Nay	Woodmansey	-	Nay
Rollins	-	Aye	Mr. Chairman	-	Nay

CLERK HANSON: Mr. Chairman, twenty-eight Delegates voting Aye, sixty-six voting No.

CHAIRMAN GRAYBILL: Sixty-six Delegates having voted Aye and only twenty-eight voting No, the motion to reconsider

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section fourteen is defeated. Mr. Brazier, you have a motion to reconsider section two -- section two of -- section two we passed this morning and I'll read it here in a minute, but Mr. Brazier, do you wish to reconsider section two?

DELEGATE BRAZIER: I do, Mr. President. May I speak on my reasons for the motion?

CHAIRMAN GRAYBILL: Well, make your motion first.

DELEGATE BRAZIER: Mr. President, or Mr. Chairman, having voted on the prevailing side upon the motion to adopt section two of the judicial article, as proposed by Mr. Melvin -- or was it Mr. Schiltz? Mr. Schiltz? --

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE BRAZIER: -- I now move that we reconsider the same.

CHAIRMAN GRAYBILL: Very well, before you speak on it, let me read it to the body, because this is the judicial committee proposal that you got -- it was the first thing we did this morning. If you'll look in your papers you'll find it. It says: Section Two, Supreme Court Powers. The supreme court has appellate jurisdiction, including jurisdiction to hear and determine writs appropriate to its appellate jurisdiction, and original jurisdiction to hear -- to issue, hear and determine writs of habeas corpus. It has general supervisory control over all other courts. It may make rules governing appellate procedure, rules of practice and procedure for all other courts,

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and rules of admission to the bar and conduct of its members. Then we added: Rules of procedure shall be subject to approval or disapproval by the legislature in either of the two sessions following their promulgation. Mr. Brazier, do you want to explain your purpose in moving to reconsider?

DELEGATE BRAZIER: I do, Mr. Chairman. Mr. Chairman and fellow Delegates, for your information, if you see merit in my motion to reconsider, I will move that we strike from the provision as adopted that sentence contained on line thereof which reads as follows: It has general supervisory control over all other courts. Now, the reason that I propose to make this motion is that there have been a number of actions taken by this body in the interim since the adoption of the proposal. To put you back into perspective, you will recall that I quizzed Mr. Schiltz about the intention of the sentence and Mr. Berg candidly volunteered that it was entirely likely under that sentence that the supreme court would exert some function other than the use of a remedial writ. Now, since we have adopted that proposal, and in the adoption of that proposal we have provided for the following functions of the supreme court: the use of remedial writs without limitation, and by that I take it to mean that all remedial writs presently recognized by Montana jurisprudence, including the writ of supervisory control, would continue to have viability. We have provided for the creation and administration and modification of judicial districts. We

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have provided for the temporary assignment of judges within those districts. We have provided for rules governing appellate procedure. We have provided for rules of practice and procedure before courts. We have provided rules for admission to practice, and we have provided for removal and discipline of judges. To complicate the matter somewhat, we have also deleted any mention of clerks of the supreme court. Now, I will put it to you, if this court is supposed to have a function under this general supervisory control, the better practice would be to spell it out. If there is to be no function, then the better practice would be to delete that sentence because there's no reason to have it in there. Thank you, Mr. Chairman. That concludes my remarks.

CHAIRMAN GRAYBILL: Very well, Mr. Brazier has made a motion to reconsider section two, the purpose being to take out of it the language concerning general supervisory control over other courts by the supreme court. So many as shall be in favor of Mr. Brazier's motion to reconsider section two, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, please say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The reconsideration is defeated. Very well, Mr. Harper and Mr. Burkhardt, you have both moved

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to reconsider section fifteen, which is contained on page thirty-eight. That's the campaign expenses bit. Section fifteen is on page thirty-eight. Mr. Burkhardt and Mr. Harper, which one of you cares to make the motion?

Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, having voted with the prevailing side and in fairness, because of the closeness of the issue, I move that we reconsider this section, and I'll so move.

Mr. President.

CHAIRMAN GRAYBILL: Just a minute until I make my note here.

Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. President --

CHAIRMAN GRAYBILL: Mr. Burkhardt has moved to reconsider section fifteen on page thirty-eight, which is the campaign expenditures section, and has voted on the prevailing side. Mr. Burkhardt, do you wish to explain your motion to reconsider?

DELEGATE BURKHARDT: I think I perhaps did in the earlier statement. I'll wait for the vote and then would like to speak to it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: When this issue was up before, I made a very gross misstatement of the fact, saying that you

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wouldn't get a shot at these people for six or eight years. I'm very sorry. I didn't vote on it. But, I think this is one of the more serious things we've done since we've gathered here when we're providing campaign expenses to run. I'm sure these offices are attractive enough, we haven't had campaign expenses before, and we've always had plenty of candidates. And, I think it would be a mistake to put this in.

DELEGATE AASHEIM: Roll call vote.

CHAIRMAN GRAYBILL: So many as -- there has been a request for a roll call vote on reconsideration of section fifteen. So many as are in favor of reconsidering section fifteen, please indicate by saying Aye -- or, voting Aye on the voting machine. So many as are opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	-	Aye	Artz	-	Aye
Anderson, J.	-	Aye	Ask	-	Aye
Anderson, O.	-	Aye	Babcock	-	Aye
Arbanas	-	Aye	Barnard	-	Aye
Arness	-	Nay	Bates	-	Aye
Aronow	-	Nay	Belcher	-	Aye

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1	Berg	-	Aye	Felt	-	Nay
2	Berthelson	-	Aye	Foster	-	Nay
3	Blaylock	-	Nay	Furlong	-	Aye
4	Blend	-	Aye	Garlington	-	Aye
5	Bowman	-	Aye	Gysler	-	Aye
6	Brazier	-	Aye	Habedank	-	Aye
7	Brown	-	Nay	Hanson, R. S.	-	Aye
8	Bugbee	-	Nay	Hanson, R.	-	Nay
9	Burkhardt	-	Aye	Harbaugh	-	Aye
10	Cain	-	Aye	Harlow	-	Aye
11	Campbell	-	Aye	Harper	-	Aye
12	Cate	-	Aye	Harrington	-	Nay
13	Champoux	-	Aye	Heliker	-	Nay
14	Choate	-	Absent	Holland	-	Nay
15	Conover	-	Absent	Jacobsen	-	Nay
16	Cross	-	Nay	James	-	Aye
17	Dahood	-	Absent	Johnson	-	Aye
18	Davis	-	Aye	Joyce	-	Aye
19	Delaney	-	Aye	Kamhoot	-	Aye
20	Driscoll	-	Aye	Kelleher	-	Absent
21	Drum	-	Aye	Leuthold	-	Aye
22	Eck	-	Aye	Loendorf	-	Aye
23	Erdmann	-	Aye	Lorello	-	Nay
24	Eskildsen	-	Aye	Mahoney	-	Nay
25	Etchart	-	Aye	Mansfield	-	Aye

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Martin	-	Nay	Scanlin	-	Aye
McCarvel	-	Nay	Schiltz	-	Nay
McDonough	-	Nay	Siderius	-	Nay
McKeon	-	Nay	Simon	-	Absent
McNeil	-	Nay	Skari	-	Aye
Melvin	-	Nay	Sparks	-	Aye
Monroe	-	Nay	Speer	-	Aye
Murray	-	Absent	Studer	-	Aye
Noble	-	Aye	Sullivan	-	Nay
Nutting	-	Aye	Swanberg	-	Aye
Payne	-	Aye	Toole	-	Nay
Pemberton	-	Aye	Van Buskirk	-	Aye
Rebal	-	Nay	Vermillion	-	Aye
Reichert	-	Aye	Wagner	-	Aye
Robinson	-	Aye	Ward	-	Nay
Roeder	-	Nay	Warden	-	Absent
Rollins	-	Nay	Wilson	-	Aye
Romney	-	Nay	Woodmansey	-	Aye
Rygg	-	Aye	Mr. Chairman	-	Nay

CLERK HANSON: Mr. Chairman, thirty-two -- sixty-one Delegates voting Aye, thirty-two voting No.

CHAIRMAN GRAYBILL: Sixty-one Delegates having voted Aye and only thirty-two No, the motion to reconsider carries and we are now reconsidering section fifteen on page thirty-eight.

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Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, fellow Delegates, as a way of preparing for going through this judicial article, I had a friend --

CHAIRMAN GRAYBILL: Mr. Burkhardt, do you want to make a motion?

DELEGATE BURKHARDT: All right, fine. I guess that at this point I would make a motion that we delete this article as it is now contained.

CHAIRMAN GRAYBILL: Mr. Burkhardt makes a motion that we delete article -- or delete section fifteen. Very well, Mr. -- go ahead.

DELEGATE BURKHARDT: As a way of preparing for the article as we have been going through it and recognizing that much of the time I've been over my head in terms of what has been discussed, I have a friend who has had considerable legal experience go through this article and make notes in the margin and one of his -- most of his notes have been very helpful. All of the critical areas we've spent time on he hit pretty much on target, and it was helpful to have his ideas. This particular one, he writes, it's a good idea. I hope it's well debated before its death. And, I submit that if it is a good idea it can stand the light of day and this is the time to give it the light of day. I would feel very badly if we nailed the lid down on a coffin of a living possibility and personally, I

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I don't know if I'm bound to vote as I moved, but I'm going to listen to it debated, if I may, and make that decision after I have heard some further conversation on it. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee, I've been in politics long enough to know when the handwriting is on the wall and I just saw it a minute ago. I want to say very briefly that we have given a great deal of lip service here today about attracting people to the judiciary. We are going to get these great fellows who are going to run. And, I'll tell you what we're going to get to run. We're going to get nobody because we're going to lock in a bunch of blue ribbon committee of appointed people and when the contest comes up, which it won't, those same people who got appointed by the blue ribbon committee are going to get the money. And the poor devil who is down there and says, I'd like to be a judge, and probably has as many or more qualifications than the other fellow is not going to be able to match him dollar for dollar and he's going to get whipped, and after about one turn at that, you're not going to have any more candidates on this beautiful plan of Mason Melvin's. You're just not going to have any more candidates. Now, if you want to go back to the same old shoddy system that we've had for years, and I can give you book, chapter and verse on that shoddy system, then you vote to reconsider this thing and kill it, which I think you're going to do

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anyway, but I'm going to get on record as saying that this shoddy system has incorporated in it such things as candidates who list contributions that have not, in fact, been made by the people to whom they're listed and I can prove it if I need to. This is the most -- I started out by saying that this is the most progressive thing that's been in this body to date and it's going to come some day and it ought to be in here right now. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I rise to oppose the motion to delete this section and I'll just say briefly that I would just as soon pay a few dollars in my tax bill for this purpose than to pay it in my utility bill and have twenty-two percent added.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I am here for judicial reform. I think that we have taken steps in that direction. I think we have improved the judiciary. I think the people are going to respect us for it and they are going to appreciate the changes that have been made. One of the great critiques that has been made about the judicial system of Montana and the one issue that has caused the tremendous debate and has been reflected here to some degree, has been the fact that we have had a locked-in judiciary by virtue of the fact that they have to spend so much to campaign from one end of the state

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to the other that only the so-called big boys can afford to support them with enough campaign funds so that they can be successful, and as a consequence, being the imperfect human beings that they are, just like the rest of us, subconsciously, at least, it has an effect upon their decisions and upon their work in our behalf as part of the highest tribunal in this state. The real answer, now that we have the system that we have adopted, is to follow Delegate Schiltz and make sure that they don't have to go out like traditional beggars and have the people with the deep pocket give them the funds necessary to stay in office, and that way we're all going to get a better quality of justice and get the type of decision that we are entitled to have in the temple of justice. I do have one question for Jack Schiltz, however, that does bother me and I would ask at this time if Delegate Schiltz will yield for that question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE DAHOOD: Jack, I like the idea, of course. What does concern me -- does this proposal provide that anyone that wants to run for judge qualifies for use of the state funds for campaign purposes?

DELEGATE SCHILTZ: Only in the general election.

DELEGATE DAHOOD: Thank you very much.

(Delegate Aasheim in Chair of Committee of the Whole.)

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CHAIRMAN AASHEIM: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I rise in opposition to the authorization of campaign funds. Under the guise of using the type of assumption that my friends and fellow lawyers here today have used, I would like to point out that to me, as a lay person, it opens the door for citizens to finance the campaign expenditures of the elected executive officials of the legislature, which is something that I do not believe we can overlook. Now that we have taken the word, non-partisan, out of the judicial proposal, I think that we are now enabling the judges to circulate among the people to act as campaign candidates and to operate within the party system, and I object to the proposition of providing campaign funds.

CHAIRMAN AASHEIM: Mr. Harlow, you wanted to rise?

DELEGATE HARLOW: I -- Mr. Chairman, I support the proposal to delete this. We have heard a lot about assorted relief measures for assorted people -- if this isn't a relief measure for lawyers, I never saw one. Why don't we, as Delegate Blend said, allow campaign funds for everyone? This is entirely wrong.

CHAIRMAN AASHEIM: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Johnson.

DELEGATE JOHNSON: I propose a substitute motion for all motions pending. On page thirty-nine on this section--

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let's see, on line three, mark -- well, it's page thirty-nine on line three, cross out appropriate, the third word, and put in, set amount of. And then on line ten, at the end, cross out the word, appropriated; on line eleven, delete the word, and.

CHAIRMAN AASHEIM: Mr. Johnson --

DELEGATE JOHNSON: Then this section will read: Campaign Expenses. The legislative assembly shall set amount of funds for the contested general election campaign expenses of candidates for the offices of justices of the supreme court and district court judges and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the supreme court or district court judge, nor any person or persons in his or her behalf, shall expend money in a campaign for the office in excess of the amount authorized by the legislative assembly. (End reading) This would equalize the poor man and the rich man and the rich clubs and the poor clubs and I think is a start toward the proper type of campaign expenditure in the state of Montana.

CHAIRMAN AASHEIM: Mr. Johnson, will you send up your amendments? Any discussion on the amendment of Mr. Johnson?

Mr. Graybill.

DELEGATE GRAYBILL: Mr. President, the amendment of Mr. Johnson goes half way, but I would like to speak to you seriously about what I think is the true import of section fifteen. Now, you people are worried about the public treasury

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1 having to pay the expenses of some candidates. In the first
2 place, the amount that the public treasury would pay would be
3 set by the legislature and while it might err on the side of
4 setting it too low, I don't think it would spend too much of
5 our money. The truth of the matter is that in campaigns for
6 judge and for chief -- and for justice of the supreme court,
7 great sums of money are expended every time there is a contest.
8 These sums of money come from interested clients. Now, a
9 judge--a person running for office--does not go around -- a
10 judge that's running for office does not go around and get a
11 dollar here and a dollar there like someone running for the
12 legislature. The people that run for justice of this supreme
13 court get large sums of money paid to them and they get it paid
14 to them by people who have important cases commonly before the
15 court. Now, you figure out who that is, and these people put
16 up large sums of money. I don't want to interrogate Mr. Schiltz,
17 but I can tell you that Mr. Schiltz didn't spend five or ten
18 thousand. I can tell you that in his behalf monies that he
19 collected probably closer to fifty thousand was spent, and on
20 behalf of his opponents, I can tell you that probably more than
21 that was spent. I know what a statewide campaign costs and
22 you don't buy those kind of offices or run for them for that
23 small amount of money. Now, the whole issue is, are we going
24 to let the judiciary continue to get its money to run for con-
25 tested supreme court offices by getting it from big court

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corporations and concerns who have a lot of litigation in the supreme court? If we are, then kill section fifteen. But, if you're concerned, as Mr. Schiltz is and as several of us are, that the supreme court ought to be a place where the few clients who use it a lot ought not to be able to contribute large sums to a supreme court candidate, then you'd better vote for this, or you'd better vote at least for Mr. Johnson's amendment because that's the only way, and the last chance, probably, that you're ever going to have to straighten that situation out. The idea that this is a lawyers' relief bill is nonsense. The people that it's going to relieve is the common people who have to go to that supreme court occasionally against some major interest who is there constantly. If you have to do that, this is your last chance to contribute to somebody's campaign and make it pay, because if you don't do it now, you're just not going to be able to contribute enough to ever overcome the money that is going to be put up against you by those who do go often enough and who do have the wherewithall to pay. So, you decide what you want to do but here's a chance to reform our judicial system at the supreme court level in a major way.

CHAIRMAN AASHEIM: Any further discussion on Johnson's proposal?

Mrs. Payne.

DELEGATE PAYNE: May I ask Mr. Johnson a question?

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DELEGATE JOHNSON: I yield.

DELEGATE PAYNE: I'm wondering how -- you know, what kind of a law will you pass to see that they don't spend more than a set amount? You know, right now, when people run for the legislature they can spend what? A hundred and fifty dollars? And then they can have as many clubs as they need to. What would you -- you know, what else would you put in here to see that they only spent the set amount?

DELEGATE JOHNSON: Well, that takes a little research, I'm sure, but I do not have a set amount at the moment. I think that, in answer to that question, that --

DELEGATE PAYNE: Yes, but how much --

DELEGATE JOHNSON: -- any -- any amount -- any amount set would be OK because they'd all have an equal chance --

CHAIRMAN AASHEIM: Please direct your questions to the Chair, please.

DELEGATE PAYNE: Well, he hasn't answered my question. What I wanted to find out is, what could you put in here so that whoever was running for office would only spend that amount of money?

CHAIRMAN AASHEIM: Will you yield, Mr. Johnson?

DELEGATE JOHNSON: Yes, I yield, Mr. Chairman. I would have that just put as prescribed by law, that's whatever the amount the legislature would set up. It would have to be a reasonable amount. It would be equal for everybody.

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DELEGATE PAYNE: Mr. Chairman, I think Mr. Schiltz wants to say something. Do you want to answer that question?

DELEGATE SCHILTZ: I can answer it very simply. Obviously, Mr. Johnson hasn't taken a look at it. It says, no candidate for the supreme court or district court, nor any person or persons on his behalf shall expend money on a campaign for the office in excess of the amount -- and, as Mr. Johnson has it, in excess of the amount authorized by the legislature.

CHAIRMAN AASHEIM: Any further discussion on Mr. Johnson's proposal?

Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, as a matter of information, is a motion to amend in order at this time?

CHAIRMAN AASHEIM: What did you want to amend, Mr. Brazier?

DELEGATE BRAZIER: In substance, I wanted to amend by striking out the reference to district court judges. It seems that all of our attention is directed at the supreme court judge race and by deleting district court judges we might make it more palatable to those who might otherwise be opposed.

CHAIRMAN AASHEIM: Mr. Brazier, I believe you should amend Mr. Johnson's amendment at this time.

DELEGATE BRAZIER: All right. Then, accordingly, I move to amend Mr. Johnson's motion by striking from line five

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on page thirty-nine after the word, supreme court, the words -- the three words, and district court; and, further, by striking from line eight on page thirty-nine after the words, supreme court, the words, or district court judge comma.

CHAIRMAN AASHEIM: All right, Mr. Brazier.

DELEGATE BRAZIER: I submit my motion without argument. I think my previous comments speak for themselves.

CHAIRMAN AASHEIM: Any further discussion on Mr. Brazier's amendments?

Mrs. Babcock.

DELEGATE BABCOCK: Would a motion to pass for the day be in order?

CHAIRMAN AASHEIM: Yes, it would.

DELEGATE BABCOCK: I'd like to pass this for the day and give this Convention a chance to think about this overnight.

CHAIRMAN AASHEIM: I believe you should pass until nine o'clock tomorrow --

DELEGATE BABCOCK: Until nine o'clock tomorrow morning.

CHAIRMAN AASHEIM: The motion has been made to pass consideration of this -- amendment, was it, Mrs. Babcock?

DELEGATE BABCOCK: Amendment or whatever is in order.

CHAIRMAN AASHEIM: I believe the motion would be then to pass consideration until nine o'clock, the reconsideration and amendments to section sixteen -- fifteen. As many as are

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in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Contrary?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is lost. We are now back to Mr. Brazier's amendment. As many as are in favor of --

Mr. Schiltz.

DELEGATE SCHILTZ: I resist Mr. Brazier's amendment. I think what applies to one court applies to another. What we are after is to get the best possible candidates we can get for any judicial office.

CHAIRMAN AASHEIM: Mrs. Bates, are you talking on Mr. Brazier's amendment?

DELEGATE BATES: Yes, Mr. President.

CHAIRMAN AASHEIM: All right.

DELEGATE BATES: As far as district courts or supreme courts, I can't see any difference. I feel this is something that should be -- the entire section should be deleted. It is a statutory matter. What if the legislature fails to appropriate one cent? It is absolutely verbiage and I think it should not be in the Constitution. If we can't do it for all the candidates, including the governor and all the rest of the candidates, why, I don't feel we should do it just for the supreme court. Thank you.

CHAIRMAN AASHEIM: Mr. Scanlin.

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DELEGATE SCANLIN: Mr. Chairman, would Mr. Schiltz yield to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Schiltz?

DELEGATE SCHILTZ: Yes, I yield.

DELEGATE SCANLIN: Now that -- Mr. Schiltz, Mr. Chairman, now that the -- we have the poor JP's in, who is going to pay for their campaign?

DELEGATE SCHILTZ: That is covered --

CHAIRMAN AASHEIM: Mr. Schiltz, will you answer that?

DELEGATE SCHILTZ: That isn't covered by section fifteen.

CHAIRMAN AASHEIM: Are you ready to vote on Mr. Brazier's --

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, when I came over here I thought there was three parts of government. I thought there was the legislative, the executive, and also the judiary. But, I'm beginning to believe that we only have the judiciary. If we haven't put every emphasis on the judiciary since I've been here, I'm mistaken in what I've learned. I think it's very important, if we're going to set up a fund like this to take care of the judges for the simple reason that we give -- that we can get honester judges or judges that are not obligated to anybody, I say we ought to do this for the governor especially. If there's another branch of government we need to

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have independent so that he can be absolutely honest and not be obligated to anybody, then I think the governor should have a fund, too. Now, then, we come to the other branch of government, the legislature. What about the poor legislator? Why not give him a few dollars to campaign on, too? Do the judges receive such poor salaries and such a poor retirement plan that they're not able to go out and campaign? I doubt that. I think they can campaign just like every other candidate does. When you go into politics, you look for political office, then you got to expect to find your own campaign funds and to finance it yourself. That's the way I always did. I don't think we should do anything for the judiciary that we don't do for the legislature and, especially, that we don't do for the governor.

CHAIRMAN AASHEIM: Mr. Brazier, do you want to -- Mr. Johnson, do you want to talk on Mr. Brazier's motion to amend?

DELEGATE JOHNSON: I close.

CHAIRMAN AASHEIM: Mr. Brazier, do you want to close?

DELEGATE BRAZIER: I do, Mr. Chairman.

CHAIRMAN AASHEIM: You can close.

DELEGATE BRAZIER: In response to Mr. Eskildsen's comments, I would merely point out that there is a distinction between those candidates for judicial offices and the others he mentioned and that is, at least by custom and practice, those running for judicial office are in a non-partisan capa-

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city and I think we have gone into that in sufficient depth. With respect to my motion, I was merely trying to be helpful and it is made in recognition of the fact that, as you have been enlightened, that in a good number of contests for the district court -- or elections for district court, there are no contests and when the voters back home start contemplating what kind of a package we're handing them so far as expense is concerned, they're going to give thought to thirty or forty district court judges and it may seem a little too much to swallow in one chunk, one bite; whereas, if we limit it to the office that is critical and does set the policy, and does set the precedent, it might be a little more acceptable. Mr. Chairman, I would ask for a roll call vote and ask for seconds.

CHAIRMAN AASHEIM: Mr. Berthelson, for what purpose do you arise?

DELEGATE BERTHELSON: Would Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: Yes, I'll yield.

DELEGATE BERTHELSON: Mr. Graybill, does section fifteen, as amended, solve the problem you so eloquently laid out for us up here, as amended on page thirty-nine by Mr. Johnson? Will that accomplish the same thing you had in mind?

DELEGATE GRAYBILL: I think that as far as I'm concerned, if we pass thirty-eight -- or, if we pass section fif-

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teen in any form it will be an improvement. As far as I'm concerned, we don't need the district courts in there but it certainly would be well -- it would be fine if they were in there. I would prefer not to have the legislature set the amount. That still allows -- suppose the legislature set a hundred thousand dollars, that still allows the judge to get his hundred thousand dollars and that makes it awful hard for the man who is running against him to get his hundred thousand. So, I would prefer it to be appropriated and limited to the supreme court, as Mr. Brazier says, to make it less expensive but I think that if we pass it in any of the three forms that we will have accomplished a reform.

DELEGATE BERTHELSON: Thank you.

CHAIRMAN AASHEIM: We have -- Mr. Brazier closed on his motion. For what purpose do you arise, Mrs. Babcock?

DELEGATE BABCOCK: To ask Mr. Brazier a question.

CHAIRMAN AASHEIM: Mr. Brazier, do you want to answer a question?

DELEGATE BRAZIER: I may but not necessarily shall.

DELEGATE BABCOCK: As I recall, they deleted the part in the article causing judges to be partisan. Didn't we decide that they'd be -- that they should be partisan?

DELEGATE BRAZIER: No, we decided not to lock that in and my comments, my choice of words that this has been the custom in practice and tradition were in recognition of the

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fact that that's the way it has been and presumably that's the way it will be in the foreseeable future.

CHAIRMAN AASHEIM: For what purpose do you arise, Mr. Johnson?

DELEGATE JOHNSON: Mr. Chairman, for a point of clarification.

CHAIRMAN AASHEIM: All right, what is it? What is your question?

DELEGATE JOHNSON: Well, I don't have a question but I'm going to have to clarify something here because I understand from the remarks here to my amendment lead me to believe that they do not understand it. You see, I moved -- and it would have a bearing on Mr. Brazier's motion, I'm sure. I had no intentions of having appropriations made for these people. It was to delete the part about the appropriation, that the legislature was to name the amount that they were allowed, so there is no appropriation by the government. This won't cost the taxpayers anything. This is set and controlled by the legislature, setting a precedent for the amount of money spent on candidate campaigns, et cetera. Is that clear now, please? Yes, it's to limit the amount of money they are going to spend and those words I put in there would do that and it puts it equal for everybody, rich and poor alike.

CHAIRMAN AASHEIM: Mr. Cate.

DELEGATE CATE: A point of clarification. Now, if I

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understand our procedure correctly, if I vote for Mr. Brazier's amendment, which is an amendment to Mr. Johnson's, that I am voting for eliminating appropriations and simply having the matter set by the legislature as to the amount of money you can spend for supreme court campaign, is that correct?

CHAIRMAN AASHEIM: Mr. Brazier, will you again state your amendment? On page thirty-nine, is it?

DELEGATE BRAZIER: Well, after being advised by Mr. Johnson on what the substance of his motion was, I think I'd rather make my motion to amend apply if his motion is defeated. I would renew it. I'll withdraw it at this time and renew it at a more appropriate time.

CHAIRMAN AASHEIM: Well, Mr. Brazier has asked to withdraw his motion, or to amend. Without objection, that will be withdrawn so we are then back to Mr. Johnson's amendment and does anyone want it read again to clarify it?

Mrs. Babcock.

DELEGATE BABCOCK: I'd like to have it printed and spread upon the desks so we can study it tomorrow morning at nine o'clock.

CHAIRMAN AASHEIM: You'd better make a motion then, Mrs. Babcock, that we pass consideration again.

DELEGATE BABCOCK: I so move.

CHAIRMAN AASHEIM: A motion has been made that we pass consideration of the amendment to section fifteen until

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nine o'clock tomorrow morning. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is lost. All right, we are on Mr. Johnson's motion to amend section fifteen, and the way I understand this motion is, on page nineteen, line three, to delete appropriate and insert amount of. Is that correct? And in line ten, delete appropriation -- or, appropriated; and in line eleven, delete and. Is that correct, Mr. Johnson?

DELEGATE JOHNSON: That is correct.

CHAIRMAN AASHEIM: Any further discussion?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee, I want to be very clear because there seems to be just a little bit of misunderstanding, that Mr. Graybill put his finger on it. The legislature can set that figure high enough so that we're back in the same old soup. I think that Mr. Johnson anticipates that the legislature will set it very low but we can't be sure that they will. So, if the legislature picked a figure of fifty thousand dollars, which is not unrealistic, then we're right back where we were.

CHAIRMAN AASHEIM: Mr. Heliker, did you want to comment? Did you stand?

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DELEGATE HELIKER: (No audible response. Microphone turned off.)

CHAIRMAN AASHEIM: Mr. Champoux.

DELEGATE CHAMPOUX: I'd like to direct a question to Mr. Johnson if he will yield, please.

CHAIRMAN AASHEIM: Mr. Johnson, will you yield?

DELEGATE JOHNSON: Yes, I'll yield.

DELEGATE CHAMPOUX: Mr. Johnson, if we set the amount what do we do when we regulate the amount? You see, you've left in the word, regulate the amount, and I -- you know, is there a difference?

DELEGATE JOHNSON: Well, I presume -- well, I hadn't thought about that to tell you the truth, no. What I'm trying to do here is set an amount that is fair and equitable in a campaign.

DELEGATE CHAMPOUX: Well, I think if you want to clarify it, maybe you should delete that. If you'd -- you know, whatever you'd want.

DELEGATE JOHNSON: Yes, I would agree to --

CHAIRMAN AASHEIM: Mr. Johnson, would you care to comment on that?

DELEGATE JOHNSON: Well, I would agree to, Mr. Chairman, to delete that word, regulate.

CHAIRMAN AASHEIM: To delete what word, did you say, Mr. Johnson?

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DELEGATE JOHNSON: Well, he said there's the word, regulate, in there -- I haven't found it yet but I'd sure be happy to delete it. It's on line six.

CHAIRMAN AASHEIM: The words, regulating, on line six. Do you want to move to amend that, Mr. Johnson?

DELEGATE JOHNSON: Well, Mr. Chairman, I just -- I don't know just how much I would have to delete in order to make any sense to it.

CHAIRMAN AASHEIM: Well, I would recommend that you maybe think about it a minute and -- while we continue the discussion.

DELEGATE JOHNSON: Thank you.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I wish to direct an inquiry to Delegate Johnson but I don't want to interrupt him so I'll hold up a minute while he does that and then come back if I may.

CHAIRMAN AASHEIM: Any other discussion on Mr. Johnson's amendment?

Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I would like to rise to oppose Mr. Johnson's amendment to support the deletion of section fifteen, and I'd like to make a couple of points, rather reluctantly, that have not come up as yet. I think one point that I'd like to make is that it looks like we are moving ra-

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pidly into an area that there is some need for relief. However, the relief looks like it may become kind of complicated down the road. Now, the wording here is--nor any person or persons on his or her behalf. We haven't considered what effect a club would have. Is a club a person? Say we appropriate so much money for the expenditure of a person running for a -- for this position. Perhaps a club would be away from the law and he could go ahead and raise any other amount he'd like to and spend more than his opponent. Another point that I would like to make is that running for the office of supreme court could be considered pretty good advertising for a member of the legal profession. It may have some side benefits that offset the cost of seeking that office. And the third thought that I have that runs through my mind, there may be a set of circumstances where a person may say to himself, I think I would like to run for governor two years hence or perhaps at a later time. I don't have a very good chance of becoming the supreme court associate justice or even the chief justice, however the case may be, but I think I'll run for that job because it's going to give me some good statewide exposure and maybe there will be some carry-over effect at a later time. Well, this really is subsidizing the lawyer's effort to become governor and I think we are giving him an unfair advantage which we are not giving a farmer, a rancher, a fertilizer salesman, or whoever may wish to run for governor at a later time. So, even though

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I sympathize with the thought that was presented by Mr. -- by Delegate Graybill and I certainly sympathize with Mr. Schiltz, I feel at this time we may be acting rather hastily and creating some problems that we don't recognize at this point.

CHAIRMAN AASHEIM: Discussion is certainly in order. Any discussion on this main section is in order. However, I would like to dispose of this motion to amend and you will still have an opportunity to talk on the original motion.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I would like to direct a question to Delegate Johnson.

CHAIRMAN AASHEIM: Mr. Johnson, will you yield?

DELEGATE JOHNSON: I'll yield.

DELEGATE ROMNEY: Torrey, on line ten there where you took out the word, appropriated, and the next line the word, and, and left authorized -- what do you understand by authorizes? What does it mean to you? Does it mean that they can go ahead and do that much but there's no money involved?

DELEGATE JOHNSON: Well, that word, authorized, there, Mr. Romney, I take to mean that's an amount sanctioned or agreed upon as a fair amount. It's --

DELEGATE ROMNEY: You said that --

DELEGATE JOHNSON: It's not an appropriation. I see what you mean, that authorized could be construed to mean that the legislature might appropriate it.

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DELEGATE ROMNEY: Mr. Chairman, I --

DELEGATE JOHNSON: I didn't mean that.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: That is what I meant. You said that -- I believe in your previous discussion, that there would be no money involved, it wouldn't cost the state anything. Is that correct?

CHAIRMAN AASHEIM: Will you yield, Mr. Johnson?

DELEGATE JOHNSON: Yes, I yield, and that is correct.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: That being the case, this section has no gas.

CHAIRMAN AASHEIM: What are you -- I don't understand what you said, Mr. Romney.

DELEGATE ROMNEY: Mr. Torrey -- or, Mr. Johnson's reply indicates that this section has no power or effect. It cannot -- the candidates for the justices of the supreme court or the district court, if they are included, will get no money. They get an authorization. Well, we already have an authorization in the statutes in the corrupt practices act. They only allow a certain amount, so I don't see that this is getting anywhere unless the state appropriates some money.

CHAIRMAN AASHEIM: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I would like to

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suggest that there is a large difficulty in these words saying that no person or persons on his or her behalf shall expend money. There are citizen groups, like for example the League of Women Voters who have very estimable political concern over candidates for public office. There are other groups of one kind or another who feel that they are very interested in the candidacy of some given judicial office, and I only am asking now if consideration shouldn't be given to the fact that we may be reaching this prohibition out so far in its hard constitutional language and reach, that we will inhibit the rights of citizen groups to take an interest in this sort of thing.

CHAIRMAN AASHEIM: The Chair would like to say that if you vote for or against the original motion, you are going to do exactly what you are trying to do with the amendment, so I would recommend that we vote on Mr. Johnson's amendment and continue on and take care of the original motion.

Mrs. Bugbee.

DELEGATE BUGBEE: May I make a remark to Mr. Garlington? Mr. Garlington, the League of Women Voters doesn't support candidates and we have absolutely not one red dime.

CHAIRMAN AASHEIM: Are you ready for the motion by Mr. Johnson to amend? Was there a roll call vote asked for on this? A roll call vote has been requested. As many as are in favor of the motion by Mr. Johnson to amend will vote Aye and those opposed will vote No. Has everyone voted?

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(No response)

CHAIRMAN AASHEIM: Does anyone wish to change his vote?

(No response)

CHAIRMAN AASHEIM: The Clerk will close the vote.

Anderson, J.	-	Nay	Cain	-	Nay
Anderson, O.	-	Nay	Campbell	-	Nay
Arbanas	-	Nay	Cate	-	Nay
Arness	-	Nay	Champoux	-	Nay
Aronow	-	Nay	Choate	-	Absent
Artz	-	Nay	Conover	-	Nay
Ask	-	Nay	Cross	-	Nay
Babcock	-	Nay	Dahood	-	Nay
Barnard	-	Nay	Davis	-	Nay
Bates	-	Nay	Delaney	-	Nay
Belcher	-	Nay	Driscoll	-	Aye
Berg	-	Nay	Drum	-	Nay
Berthelson	-	Nay	Eck	-	Nay
Blaylock	-	Nay	Erdmann	-	Nay
Blend	-	Aye	Eskildsen	-	Absent
Bowman	-	Nay	Etchart	-	Nay
Brazier	-	Nay	Felt	-	Nay
Brown	-	Nay	Foster	-	Nay
Bugbee	-	Nay	Furlong	-	Nay
Burkhardt	-	Nay	Garlington	-	Nay

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1	Graybill	-	Nay	McKeon	-	Nay
2	Gysler	-	Nay	McNeil	-	Nay
3	Habedank	-	Nay	Melvin	-	Nay
4	Hanson, R. S.	-	Nay	Monroe	-	Nay
5	Hanson, R.	-	Nay	Murray	-	Nay
6	Harbaugh	-	Absent	Noble	-	Nay
7	Harlow	-	Nay	Nutting	-	Nay
8	Harper	-	Nay	Payne	-	Nay
9	Harrington	-	Nay	Pemberton	-	Nay
10	Heliker	-	Nay	Rebal	-	Nay
11	Holland	-	Nay	Reichert	-	Nay
12	Jacobsen	-	Nay	Robinson	-	Nay
13	James	-	Nay	Roeder	-	Nay
14	Johnson	-	Aye	Rollins	-	Nay
15	Joyce	-	Nay	Romney	-	Nay
16	Kamhoot	-	Aye	Rygg	-	Nay
17	Kelleher	-	Absent	Scanlin	-	Nay
18	Leuthold	-	Aye	Schiltz	-	Nay
19	Loendorf	-	Nay	Siderius	-	Nay
20	Lorello	-	Absent	Simon	-	Absent
21	Mahoney	-	Nay	Skari	-	Nay
22	Mansfield	-	Nay	Sparks	-	Nay
23	Martin	-	Nay	Speer	-	Nay
24	McCarvel	-	Nay	Studer	-	Nay
25	McDonough	-	Nay	Sullivan	-	Nay

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Swanberg	-	Nay	Ward	-	Nay
Toole	-	Nay	Warden	-	Nay
Van Buskirk	-	Nay	Wilson	-	Nay
Vermillion	-	Nay	Woodmansey	-	Nay
Wagner	-	Aye	Mr. Chairman	-	Absent

CLERK HANSON: Mr. Chairman, six Delegates voting Aye, eighty-seven voting No.

CHAIRMAN AASHEIM: Eighty-seven having voted No and six having voted Aye, the motion is lost.

Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, I would now reassert my motion to amend, directed at page thirty-eight -- I believe it's section fifteen of the judicial article as presently adopted. Is it necessary for me to give the page -- I mean, the line number?

CHAIRMAN AASHEIM: If you're going to make a motion to amend, I'd like to have it.

DELEGATE BRAZIER: All right.

CHAIRMAN AASHEIM: The page and the lines.

DELEGATE BRAZIER: All right, page thirty-eight, line eight, following the words, supreme court, I move to strike the three words, and district court. And, in addition, on page thirty-eight at line eleven, following the words, supreme court, I move to strike the words, or district court.

Mr. Chairman.

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CHAIRMAN AASHEIM: Mr. Brazier.

DELEGATE BRAZIER: I waive further argument. I think what I have already said covers the situation. I retain my right to close, however.

CHAIRMAN AASHEIM: It's entirely up to you people. I can sit here all night if you want to discuss this thing very far.

Mr. Cate.

DELEGATE CATE: I sold about forty tickets to the Judge banquet tonight, which starts at six-thirty, and under Loendorf's amendment, I could be sued and taken to the supreme court --

CHAIRMAN AASHEIM: Right now you're going to be out of order if you don't talk on the amendment.

DELEGATE CATE: I'm going to make a non-debatable motion that we recess until eight thirty this evening.

CHAIRMAN AASHEIM: All right, as many as are in favor of recessing until nine-thirty, did you say?

DELEGATE CATE: Eight-thirty.

CHAIRMAN AASHEIM: Until eight-thirty tonight -- as many as are in favor of the motion to recess until eight-thirty say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

DELEGATES: No.

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CHAIRMAN AASHEIM: The motion is lost.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Eskildsen.

DELEGATE ESKILDSEN: I'd like to ask--is the motion before us right now to delete section fifteen in its entirety?

CHAIRMAN AASHEIM: No, it's not. It's to amend section fifteen.

DELEGATE ESKILDSEN: Well, let me ask you, was the first motion to delete it?

CHAIRMAN AASHEIM: Yes.

DELEGATE ESKILDSEN: Well, I don't see how we can amend a section we're deleting. I think we're going to have to vote on whether we're going to delete the whole section or not, and if we don't delete it, then we can go ahead to amend it, but I don't think you can amend a section that you're deleting.

CHAIRMAN AASHEIM: I'm doing O.K.

(Laughter)

CHAIRMAN AASHEIM: The Chair has been in error. We have been discussing and amending when we are out of order. The motion was to delete section fifteen and we shall now move -- or, vote on the motion to delete or not to delete. Mr. Brazier, for what purpose do you arise?

DELEGATE BRAZIER: I just had the help of a parlia-

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mentary expert, I guess, Mr. Chairman. This will put it into focus and I think we can dispose of the whole thing with maybe one more vote or two -- not more than two. But, I offer a substitute motion that we adopt section fifteen in the form in which I have described it--that is, with the deletion of the references to the district court judges.

CHAIRMAN AASHEIM: Wait a minute, now. What is your substitute motion?

(Laughter)

DELEGATE BRAZIER: All right, that we retain section fifteen as I amend it. I'll read it for you if you want me to burden the record.

CHAIRMAN AASHEIM: Well, would you restate your substitute motion, Mr. Brazier? Will you restate the substitute motion?

DELEGATE BRAZIER: I move as a substitute motion that we adopt as a provision of the judicial article a proposed section fifteen, entitled, Campaign Expenses: The legislative assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justices of the supreme court and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the supreme court, nor any person or persons on his or her behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the leg-

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islative assembly.

CHAIRMAN AASHEIM: Your motion is out of order.

(Laughter)

CHAIRMAN AASHEIM: For what purpose do you arise, Mr. Martin?

DELEGATE MARTIN: A point of order.

CHAIRMAN AASHEIM: Point of order. State it.

DELEGATE MARTIN: As I understand it, we took a roll call vote on an amendment to Mr. Johnson's motion--

CHAIRMAN AASHEIM: Which was out of order.

DELEGATE MARTIN: -- and we --

CHAIRMAN AASHEIM: The amendment was out of order, Mr. Martin.

DELEGATE MARTIN: Well, don't we have to dispose of Mr. Johnson's?

CHAIRMAN AASHEIM: We did, but it was out of order.

(Laughter)

CHAIRMAN AASHEIM: We voted practically -- six to eighty-seven but we were out of order discussing Mr. Johnson's amendment and Mr. Brazier's amendment, and we are back to Mr. Burkhardt's amendment that we delete section fifteen. For what purpose do you arise, Mr. Harper?

DELEGATE HARPER: I rise to concur with you that we are right, and that we are right now only a couple of minutes away from getting ready to adjourn. All we have to do, it seems

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to me right now, as I understand it, is to vote whether or not to delete section fifteen.

CHAIRMAN AASHEIM: That's right.

DELEGATE HARPER: And if we do delete section fifteen, it's done, and if it isn't, then there might be another amendment or two, but I was one of those who, with Mr. Burkhardt --

CHAIRMAN AASHEIM: For what purpose are you -- what are you talking about now, Mr. Harper?

DELEGATE HARPER: I'm going to --

CHAIRMAN AASHEIM: We're on the motion to delete.

DELEGATE HARPER: That's exactly what I'm on. I was one of the two who arose to suggest that since the vote was very close--forty-six to forty-five--and both Mr. Burkhardt and I voted for the prevailing side, we moved to reconsider. Mr. Burkhardt has had the time --

CHAIRMAN AASHEIM: Mr. Harper, you are out of order.

DELEGATE HARPER: No I'm not. I haven't gotten to the end of my sentence.

CHAIRMAN AASHEIM: You are out of order.

DELEGATE HARPER: Mr. Chairman, I --

CHAIRMAN AASHEIM: If you want to appeal it, fine.

DELEGATE HARPER: I do appeal it. I'm trying to tell you what my conclusion is and why I think we ought to defeat it. Now, you tell me what I should say and I'll say it.

CHAIRMAN AASHEIM: The Chair has ruled that you are

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out of order and he has appealed the judgment. I ask the assembly to --

DELEGATE HARPER: Tell me why I'm out of order.

CHAIRMAN AASHEIM: Because we are on the motion to delete.

DELEGATE HARPER: And that is what I am speaking on.

CHAIRMAN AASHEIM: The Chair wants to know if you are going to recognize his motion.

UNIDENTIFIED VOICE: He doesn't have a motion.

CHAIRMAN AASHEIM: Mr. Harper, I guess you can talk.

(Laughter)

DELEGATE HARPER: Mr. Burkhardt said, and he spoke for both of us, that we would like to hear more discussion on it. I think I probably now speak for Mr. Burkhardt. I think we have heard all the discussion we are going to hear on it on either side and I think we should now get along with the vote. My conclusion, after the discussion is that I shall again vote to retain this because I think it's a good section.

CHAIRMAN AASHEIM: For what purpose do you arise, Mr. Habedank?

DELEGATE HABEDANK: I desire to speak on this motion to delete, Mr. Chairman.

CHAIRMAN AASHEIM: All right.

DELEGATE HABEDANK: I'm sorry that Reverend Harper thinks he has heard all the discussion there is on this. I

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haven't had a chance to be recognized. I would like to call to your attention in deleting this motion -- in deleting this section or leaving it in -- that if you leave it in, the evils that you are trying to cure may be worse than the pain that you're having. The situation here is, as you read this section, if you leave it in, is that the legislative assembly shall appropriate funds for the contested general election. And then you go on to say that, nor any person or persons on his behalf shall spend any money and so forth. So, what does this leave you if you follow this section? You have an appointed supreme court justice, or district judge. Concededly, there are many people who think they have been put in office by some power that is trying to control them. All right. If they get in office, the only one who can receive money from the legislature is the person who survives the primary. As I read this section, the primary election, anyone can run for that job and there is no restriction on the amount of money that can be spent for the person to become successful in the primary against the one who is incumbent who is going into the general election, so that you have placed no restrictions on that. The incumbent has publicity in regard to his office throughout the year or years that he has been in office. He has had his name before the public and the next step you have put into this, you say to the legislature they shall appropriate funds. There is no amount in there. If the legislature in its wisdom says there

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shall be ten thousand dollars spent for each candidate -- and I submit that this may be well what they'll say -- how far would an opponent of an incumbent get in getting his name before the public with an appropriation of this kind? I therefore submit that, as worded, this section is worse than having none even though we recognize the problem and I feel that the best that we could do would be to say that the legislative assembly may appropriate funds for an election of this sort but to put it as we have it, with the restriction that we have, we are creating more problems than we have now.

CHAIRMAN AASHEIM: The Chair will advise you now that if you vote to retain section fifteen you can then amend it as you see fit, but if it is rejected -- that is, if you want to delete section fifteen, of course that kills it.

Mr. Wilson.

DELEGATE WILSON: Mr. President, I think we're straying pretty far afield here and I think that we have left a lot of things up to the legislature to handle and I think this is purely a legislative article and it should be deleted and left up to the legislature.

CHAIRMAN AASHEIM: Are you ready to vote on the motion?

Mr. Swanberg.

DELEGATE SWANBERG: Mr. President.

CHAIRMAN AASHEIM: Mr. Swanberg.

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DELEGATE SWANBERG: No doubt some time in the long distant past this same question was debated at length about candidates in general. There must have been at some time in the past a general dissatisfaction with large amounts of money being funneled into one or two candidates for some office. And so the state legislature passed a law that said they could only spend a certain percentage of their salary to run for this office. What happened? Immediately the club concept came into being. What I'm simply trying to point out here is that this proposal, well intentioned though it may be, will probably be got around somehow and the state will be on the hock for the basic campaign expenses and some candidate will find some way of getting around it. Take the case of a person who perhaps wanted to see a certain judge elected and just went ahead on his own. How would you stop him from putting ads in the newspaper? There isn't any way that I can see under this proposal that it would stop him from doing that. Or, how would you prevent him from hiring a very good public relations expert who, instead of using advertising, used it for getting newspaper articles in the newspaper all over the state? And, how would you be able to prove that that was paid for? I submit that the proposal, well-intentioned as it might be, just as Mr. Habedank has stated, is going to create more problems than it will solve.

CHAIRMAN AASHEIM: Mr. Eskildsen.

DELEGATE ESKILDSEN: I have one more question that

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I would like to ask of the delegation. Suppose we set this -- it should be set at ten thousand dollars or some other figure for a justice, and suppose that a little country attorney decides that he wants to run for this office and he gets his ten thousand dollars, and the fellow who is really serious gets his ten thousand dollars, and the little justice spends a couple of thousand of that and pockets the eight. What's to keep this from happening?

CHAIRMAN AASHEIM: Mr. Schiltz, do you want to answer that?

DELEGATE SCHILTZ: Well, I'll tell you what will keep this from happening--that's the legislature is going to provide the rules, and it's provided in there that the legislature will provide the rules. In response to your previous arguments about why don't we give some money to the legislature -- the candidates -- I hope that someday we will, and the governor and everyone else, and we're going to come to it sooner or later, but in the meantime they have the advantage of running on a partisan ticket. I think we've really -- we've said about all that could be said on this subject. I'm eager for a vote.

CHAIRMAN AASHEIM: Mr. James.

DELEGATE JAMES: Will Mr. Schiltz yield, Mr. Chairman?

CHAIRMAN AASHEIM: Mr. Schiltz?

DELEGATE SCHILTZ: Yes, indeed.

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DELEGATE JAMES: Yes, has this been tried in any other state. I'm not familiar. I've heard it proposed but I -- is it in existence anywhere?

DELEGATE SCHILTZ: Not to my knowledge.

CHAIRMAN AASHEIM: Mr. Burkhardt, do you want to close?

DELEGATE BURKHARDT: Mr. Chairman, I wish that I was more informed with the long history of participation in our court system because I feel that my concern in doing this was to be sure a fair test had been made of the real sense of the group and I may just say that it seems to me that, as it stands, section fifteen may deserve some reworking and for that reason I may vote for it--not because I like it in its current nature but because maybe it deserves a chance to be worked over in some detail as it stands. Therefore, in fairness, we have a test and I close.

CHAIRMAN AASHEIM: I believe a roll call vote was asked for. Is that right?

Mrs. Babcock.

DELEGATE BABCOCK: May I ask how it will be worked over if a vote for this is --

CHAIRMAN AASHEIM: He closed, Mrs. Babcock. I think you're --

DELEGATE BABCOCK: Well, I just want you to explain to me what I'm voting for.

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DELEGATE BURKHARDT: If you vote against deletion there may be an opportunity to rework it. If you vote for deletion, then there will not be, and I don't feel that I am required to vote for deletion even though I moved in that way.

DELEGATE BABCOCK: Well, when would the chance be to work it over?

CHAIRMAN AASHEIM: If the motion, Mrs. Babcock, fails to delete, then you'll have an opportunity to amend it. That will depend.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I was just going to say that unless we do it right now, depending on how we rise and report makes a difference on what will happen to this article. If we rise and report and we final report, then it will go to Style and Drafting. If we rise and report and beg leave to sit again, we can talk about it tomorrow but it depends upon what motion is made there. And, if we delete this now, why, that will be the end of it. If we leave it in, why -- but if we rise and finally report, that's the last we see of it until we get it back from Style and Drafting, or someone makes a motion to put it back on general orders.

CHAIRMAN AASHEIM: Is that clear, Mrs. Babcock? Is that clear now?

DELEGATE BABCOCK: (No audible response. Microphone turned off.)

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CHAIRMAN AASHEIM: As many as are in favor of the motion to delete will vote Aye, and those opposed will vote No. Has everyone voted?

(No response)

CHAIRMAN AASHEIM: Does anyone wish to change his vote?

(No response)

CHAIRMAN AASHEIM: The Clerk will record the vote.

Anderson, J.	-	Aye	Brown	-	Nay
Anderson, O.	-	Aye	Bugbee	-	Nay
Arbanas	-	Nay	Burkhardt	-	Nay
Arness	-	Nay	Cain	-	Aye
Aronow	-	Nay	Campbell	-	Nay
Artz	-	Nay	Cate	-	Nay
Ask	-	Aye	Champoux	-	Aye
Babcock	-	Aye	Choate	-	Absent
Barnard	-	Nay	Conover	-	Aye
Bates	-	Aye	Cross	-	Nay
Belcher	-	Aye	Dahood	-	Nay
Berg	-	Nay	Davis	-	Aye
Berthelson	-	Aye	Delaney	-	Aye
Blaylock	-	Nay	Driscoll	-	Aye
Blend	-	Aye	Drum	-	Aye
Bowman	-	Aye	Eck	-	Nay
Brazier	-	Aye	Erdmann	-	Aye

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1	Eskildsen	-	Aye	Lorello	-	Absent
2	Etchart	-	Aye	Mahoney	-	Aye
3	Felt	-	Nay	Mansfield	-	Aye
4	Foster	-	Nay	Martin	-	Aye
5	Furlong	-	Nay	McCarvel	-	Nay
6	Garlington	-	Aye	McDonough	-	Nay
7	Graybill	-	Nay	McKeon	-	Nay
8	Gysler	-	Nay	McNeil	-	Nay
9	Habedank	-	Aye	Melvin	-	Nay
10	Hanson, R. S.	-	Aye	Monroe	-	Nay
11	Hanson, R.	-	Nay	Murray	-	Nay
12	Harbaugh	-	Aye	Noble	-	Aye
13	Harlow	-	Aye	Nutting	-	Aye
14	Harper	-	Nay	Payne	-	Aye
15	Harrington	-	Nay	Pemberton	-	Aye
16	Heliker	-	Nay	Rebal	-	Nay
17	Holland	-	Nay	Reichert	-	Nay
18	Jacobsen	-	Aye	Robinson	-	Nay
19	James	-	Aye	Roeder	-	Nay
20	Johnson	-	Aye	Rollins	-	Nay
21	Joyce	-	Nay	Romney	-	Nay
22	Kamhoot	-	Aye	Rygg	-	Aye
23	Kelleher	-	Absent	Scanlin	-	Aye
24	Leuthold	-	Aye	Schiltz	-	Nay
25	Loendorf	-	Aye	Siderius	-	Nay

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Simon	-	Absent	Van Buskirk	-	Aye
Skari	-	Aye	Vermillion	-	Nay
Sparks	-	Aye	Wagner	-	Aye
Speer	-	Nay	Ward	-	Nay
Studer	-	Nay	Warden	-	Nay
Sullivan	-	Nay	Wilson	-	Aye
Swanberg	-	Aye	Woodmansey	-	Aye
Toole	-	Aye	Mr. Chairman	-	Aye

(President Graybill resumes chairmanship of the Committee of the Whole.)

CLERK HANSON: Mr. Chairman, forty-nine Delegates voting Aye, forty-seven voting No.

CHAIRMAN GRAYBILL: Forty-nine Delegates having voted Aye and forty-seven voting No, the section is deleted. Now, ladies and gentlemen, there is no point in debating it further, I take it. Ladies and gentlemen, we have before us one more motion to reconsider. It's Mr. Aasheim's on section eight, page forty-three.

Mr. Aasheim.

DELEGATE AASHEIM: I'm going to withdraw my motion.

(Applause)

CHAIRMAN GRAYBILL: Very well, are there other motions to delete -- other motions to reconsider, rather?

(No response)

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CHAIRMAN GRAYBILL: If not, Mr. Eskildsen, will you move that we rise and report?

DELEGATE ESKILDSEN: Mr. Chairman, and before I move to rise and report, I don't think there's any section left to reconsider so we may as well rise and finally report.

CHAIRMAN GRAYBILL: Let's rise and finally report.

DELEGATE ESKILDSEN: So, I move that the committee rise and finally report and refer the judiciary proposal to Style and Drafting.

CHAIRMAN GRAYBILL: The motion is to rise and finally report and refer the judiciary proposal to Style and Drafting. So many as shall be in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The motion carries. Now, if you'll wait just a minute while the typist types this up, we'll go into the Convention and we'll do that, and then if you'll wait just a minute, we'll all adjourn and we'll all have an equal chance at dinner. Mr. Martin, for what purpose do you arise?

DELEGATE MARTIN: I apologize, Mr. President. I wonder, while we're waiting for this, if I may -- might relate something about a telephone call that I had to Washington, D.C. today?

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CHAIRMAN GRAYBILL: Yes, you can. Go ahead.

DELEGATE MARTIN: It was the pleasure of John Toole, the vice president, and myself to talk with Senator Burton K. Wheeler who, Sunday, observed his ninetieth birthday and we expressed our congratulations to him, and he went on to say that for his hundredth birthday he hoped there would be no Constitutional Convention and perhaps he might have his hundredth birthday celebration in Montana. I think it would be appropriate if the president would write him a letter of congratulations, and I so move.

CHAIRMAN GRAYBILL: The motion has been made that the Chairman write a letter to Burton K. Wheeler, congratulating him on his birthday. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Mr. Martin, you'll have to help me get that done tomorrow. Now, will the Clerk please read the title of the committee report?

CLERK HANSON: (Reading) February 29, 1972. Mr. President, we your Committee of the Whole, having had under consideration Report Number Five, minority report of the Committee on Judiciary, recommend as follows: --

CHAIRMAN GRAYBILL: Mr. Eskildsen, first the Chair would like to know if anyone wants the Committee of the Whole

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report read in its entirety?

DELEGATES: No.

CHAIRMAN GRAYBILL: If so, stand and make yourself known; otherwise, we will defer reading the Committee of the Whole report.

(Laughter)

CHAIRMAN GRAYBILL: Mr. Eskildsen, will you make a motion?

DELEGATE ESKILDSEN: I move the Committee -- I move we adopt the Committee of the Whole report.

CHAIRMAN GRAYBILL: The motion is that we adopt the report of the Committee of the Whole. All those in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL : Opposed, Nay.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The Ayes have it.

(President Graybill in Chair of Convention.)

PRESIDENT GRAYBILL: On Order of Business Number Eleven, the Chair would like to call to your attention that you got some yellow sheets -- you ought to take them home to your wives since it affects tomorrow's agenda; that is, they are not going to have a meeting tomorrow and you ought to let

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her know that. Secondly, Mrs. Babcock, I think it would not be out of order, would it, if I announced that you are still going to have dinner for us tomorrow night? Third, the Chair would like to announce that my faith in the democratic process is restored. We finished the judiciary article in one day. We can start in on the schedule tomorrow morning. Mr. Eskildsen, do you want to make a motion to adjourn?

DELEGATE ESKILDSEN: Mr. President --

PRESIDENT GRAYBILL: Just a moment, Mr. Champoux wants to make a motion.

DELEGATE CHAMPOUX: May I make an announcement, please, sir?

PRESIDENT GRAYBILL: You may make an announcement, yes.

DELEGATE CHAMPOUX: Education Committee in the committee room at eight-thirty tomorrow morning, please.

PRESIDENT GRAYBILL: Education at eight-thirty tomorrow.

Mr. Schiltz.

DELEGATE SCHILTZ: Cut and shoot committee at eight o'clock tomorrow morning, as usual.

PRESIDENT GRAYBILL: Are there other announcements?

(No response)

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move that we

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adjourn until Wednesday, March first, nine A.M., 1972.

PRESIDENT GRAYBILL: The motion is to adjourn. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

PRESIDENT GRAYBILL: So ordered. Thank you.

(Convention adjourned at 6:50 o'clock, P.M.)

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MONTANA CONSTITUTIONAL CONVENTION

March 1, 1972 35th Convention Day Convention Hall

9:02 o'clock A.M. Helena, Montana

VICE PRESIDENT BROWN: The Convention will come to order. Please rise and Delegate Champoux will give the Invocation.

DELEGATE CHAMPOUX: Lord God of Heaven, who hath so lavishly blessed this land, make us thy people to be humble. Keep us ever aware that the good things we enjoy come from Thee, and Thou didst lend them to us. Impress upon us the knowledge that we are not owners, but stewards. Remind us, lest we become filled with conceit, that one day a reckoning will be required of us. Sanctify our love of country, that our boasting may be turned into humility, and our pride into a ministry to men everywhere. Help us to make this God's own country by living like God's own people, Amen.

VICE PRESIDENT BROWN: Can we have the roll? All those present will vote Aye on the voting machine.

CLERK HANSON: Mr. President, may Delegates Mahoney and Toole be excused, please?

VICE PRESIDENT BROWN: Let the record show they're excused.

CLERK HANSON: Delegate Anderson, John, Delegate Aronow, Delegate Babcock, Delegate Berg, Delegate Blaylock,

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Delegate Bugbee, Delegate Dahood, Delegate Drum, Delegate Foster, Delegate Hanson, Robert S., Delegate Hanson, Rod, Delegate James, Delegate Kelleher, Delegate Loendorf, Delegate Mansfield, Delegate Roeder, Delegate Speer, Delegate Sullivan.

VICE PRESIDENT BROWN: The record will show that Burkhardt, Berg, Blaylock, Garlington, Loendorf, Roeder and Speer are present. They are in Style and Drafting.

Aasheim	-	Present	Brown	-	Present
Anderson, J.	-	Present	Bugbee	-	Present
Anderson, O.	-	Present	Burkhardt	-	Present
Arbanas	-	Present	Cain	-	Present
Arness	-	Present	Campbell	-	Present
Aronow	-	Absent	Cate	-	Present
Artz	-	Present	Champoux	-	Present
Ask	-	Present	Choate	-	Present
Babcock	-	Absent	Conover	-	Present
Barnard	-	Present	Cross	-	Present
Bates	-	Present	Dahood	-	Present
Belcher	-	Present	Davis	-	Present
Berg	-	Present	Delaney	-	Present
Berthelson	-	Present	Driscoll	-	Present
Blaylock	-	Present	Drum	-	Absent
Blend	-	Absent	Eck	-	Present
Bowman	-	Present	Erdmann	-	Present
Brazier	-	Present	Eskildsen	-	Present

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1	Etchart	-	Present	Mahoney	-	Excused
2	Felt	-	Present	Mansfield	-	Absent
3	Foster	-	Present	Martin	-	Present
4	Furlong	-	Present	McCarvel	-	Present
5	Garlington	-	Present	McDonough	-	Present
6	Graybill	-	Absent	McKeon	-	Present
7	Gysler	-	Present	McNeil	-	Present
8	Habedank	-	Present	Melvin	-	Present
9	Hanson, R. S.	-	Present	Monroe	-	Absent
10	Hanson, R.	-	Absent	Murray	-	Present
11	Harbaugh	-	Present	Noble	-	Absent
12	Harlow	-	Present	Nutting	-	Present
13	Harper	-	Present	Payne	-	Present
14	Harrington	-	Present	Pemberton	-	Present
15	Heliker	-	Present	Rebal	-	Present
16	Holland	-	Present	Reichert	-	Present
17	Jacobsen	-	Present	Robinson	-	Present
18	James	-	Absent	Roeder	-	Present
19	Johnson	-	Present	Rollins	-	Present
20	Joyce	-	Present	Romney	-	Present
21	Kamhoot	-	Present	Rygg	-	Present
22	Kelleher	-	Absent	Scanlin	-	Present
23	Leuthold	-	Present	Schiltz	-	Present
24	Loendorf	-	Present	Siderius	-	Present
25	Lorello	-	Present	Simon	-	Present

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Skari	- Present	Van Buskirk	- Present
Sparks	- Present	Vermillion	- Present
Speer	- Present	Wagner	- Absent
Studer	- Present	Ward	- Present
Sullivan	- Absent	Warden	- Present
Swanberg	- Present	Wilson	- Present
Toole	- Excused	Woodmansey	- Present

CLERK HANSON: A quorum is present, Mr. President.

VICE PRESIDENT BROWN: Reports of Standing Committees?

CLERK HANSON: None, sir.

VICE PRESIDENT BROWN: Report of Select Committees?

CLERK HANSON: None.

VICE PRESIDENT BROWN: Communications?

CLERK HANSON: None.

VICE PRESIDENT BROWN: Introduction and Reference of Delegate Proposals?

CLERK HANSON: None.

VICE PRESIDENT BROWN: Final Consideration of Proposals?

CLERK HANSON: None, sir.

VICE PRESIDENT BROWN: Adoption of Proposed Constitution and Ballot?

CLERK HANSON: None.

VICE PRESIDENT BROWN: Motions and Resolutions?

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CLERK HANSON: None.

VICE PRESIDENT BROWN: Unfinished Business?

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Chairman, fellow delegates. It's my pleasure this morning to introduce to you the pages for this week. Where are the pages? Will they all come forward at this time? All pages up to the front please. Why don't you all sit down, and then as I call your name, you can stand? Who's going to make the response this morning? Okay, very good. Barry Annala of Great Falls, Clark Christian of Helena, Gail Downey of Kalispell, Sandy Halverson of Kalispell, Margo Hickman of Harlowton, Marcia Holland of Butte, Chris Miller (commonly called Tiff) of Butte, Becky Reber of Helena, Mike Trudeau of Butte, Tom Zuelke of Miles City. One of the gentlemen there will make the response. Welcome to the convention.

??: Mr. President and Delegates. I would like to first say that on behalf of myself and all the other pages, that we are very honored to be here. If there is any way we can help, just call us. We'll do anything we can for you. Thank you. (Applause)

VICE PRESIDENT BROWN: I'd like to thank the pages for being here. You'll all receive copies of the journal with your names therein. Thank you again. Number Nine, Special Orders of the Day?

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CLERK HANSON: None.

VICE PRESIDENT BROWN: Number Ten, General Orders of the Day?

DELEGATE ARONOW: Mr. Chairman, I am present.

VICE PRESIDENT BROWN: Will the record show Mr. Aronow present? Rod Hanson present. Dave Drum present. We will show you present then. Mrs. Mansfield is shown present.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that the convention resolve itself into Committee of the Whole.

VICE PRESIDENT BROWN: You've heard the motion. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT BROWN: Opposed, No.

(No response)

VICE PRESIDENT BROWN: The Ayes have it. Mr. Felt will now take the Chair.

(Committee of the Whole chairmanship assumed by Mr. Felt.)

CLERK HANSON: March 1, 1972. The following committee proposals are now on General Orders: Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Number One, Style and Drafting Number Two.

CHAIRMAN FELT: Members of the Committee will please

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be in order. We have, for our consideration, reports of the Committee on Style and Drafting. The first one deals with suffrage and elections. We'll give you a moment perhaps to locate those, in case you don't have them on your desks in a usable form. I have had no opportunity to review this with the chairman of the committee, but I'm sure we can get along fine. If you would like, Mr. Chairman, we could have the clerk read section one, or did you wish to make some opening statement since we haven't gone through this?

DELEGATE SCHILTZ: Why don't I make the usual motion, and then let's proceed from there?

CHAIRMAN FELT: Go ahead.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration Style and Drafting Committee Report Number One, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Would you express yourself as to just how much of the proposed article you are embracing within that motion?

DELEGATE SCHILTZ: I think, inasmuch as this is the first report of the Style and Drafting Committee, that possibly we can establish a format for this purpose. The rules, of course, require that we go through this thing section by section. What I would like to do is go through the entire thing, and make my comments as we go along. Then, if anybody wants

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to revert back to one section, we can do it.

CHAIRMAN FELT: I think we'll just have you make your comments and then you can restate your motion specifically as to what you're embracing within the motion after you have completed your comments.

DELEGATE SCHILTZ: All right. If you all will take the report marked Number One on suffrage and elections -- it's labelled addendum. Now, the addendum reads as the proposed article will read when the convention finally adopts that article. That's without any additions or deletions. That's after all the additions or deletions have been made. Now then, you won't need to worry about that now because we'll work on the one that's entitled Number One on suffrage and elections. If you'll turn to the second page of that, you'll see that the way the material came to the Style and Drafting Committee is exactly as it is on this page, except for the strike-outs and the underlines. So, if you look at section one, you can tell that we made no changes whatever. Where we struck out words, we struck through them, and where we supplied new material, we underlined. So, on section number one, ballot, all elections by the people shall be by secret ballot, there are no changes. Now also, when we made any changes, at the back, the last item in this thing will be our comments, which will explain the changes we made. Now, Mr. Chairman, I've got that point. We can either move to adopt section one, or we can go through the

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entire thing.

CHAIRMAN FELT: We'll take it section by section, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report after having had under consideration Style and Drafting Report Number One, section one, that it recommend the same be adopted.

CHAIRMAN FELT: Mr. Schiltz, are your comments that you've already made, sufficient for this one?

DELEGATE SCHILTZ: We didn't make any changes in section one.

CHAIRMAN FELT: The question now arises on the motion of Delegate Schiltz that when this committee does arise and report, after having had under consideration section one, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Section two.

DELEGATE SCHILTZ: Mr. Chairman. In section two, you will note that we struck out various words. If you'll look at the comments, you'll see why. We made only grammatical changes in the interest of brevity and style, and without altering any substance whatever in the section. Mr. Chairman.

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CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section two of the Style and Drafting Report Number One, it recommend the same be adopted.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report after having had under consideration section two, that the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Section three. Let's have the clerk read section three, Mr. Schiltz?

CLERK HANSON: (Reading) Section three, Elections: The legislature shall provide, by law, the requirements for residents' registration, absentee voting and administration of elections. It may provide for a system of poll booth registration and shall insure the purity of elections, and guard against the abuses of the general electoral process. Mr. Chairman, section three.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration

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section three of the Style and Drafting Report Number One, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: There are no substantive changes, only language changes.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report after having had under consideration section three, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Section four.

CLERK HANSON: (Reading) Section four, Eligibility for Public Office: Any qualified elector is eligible to any public office, except as otherwise provided in this constitution. The legislature may provide additional qualifications, but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision. Mr. Chairman, section four.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section four of the Style and Drafting Report Number One, it

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recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: You will note in the comments as to section four, that we deleted language in lines twenty-two and twenty-three, and only repeated the qualifications set forth in section two. The form of lines twenty-five through twenty-eight was changed to avoid the presence of, except, subject to, and provided however, in the same sentence. That's all, Mr. Chairman.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report after having had under consideration section four, it recommend the same be adopted. All in favor signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Section five.

CLERK HANSON: (Reading) Section five, Result of Elections: In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected. Mr. Chairman, section five.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration

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section five of Style and Drafting Report Number One, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: You'll note from the comments there, that we deleted some material that was superfluous. The words, by the people, in line twenty-nine, we left in to assure certainty that elections were political as opposed to corporate elections, for example. We changed the highest number of legal votes to the largest number, and we struck the word, legal, because a vote is either legal or it's illegal. It isn't a vote if it's illegal. That's all, Mr. Chairman.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report after having had under consideration section five, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Section six.

CLERK HANSON: (Reading) Section six, Privilege from Arrest: A qualified elector is privileged from arrest at polling places, and in going to and returning from, unless apprehended in the commission of a felony or a breach of the peace. Mr. Chairman, section six.

DELEGATE SCHILTZ: Mr. Chairman.

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CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section six of the Style and Drafting Report Number One, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Now, here's a point where I want to alert the committee. We struck out the language completely which had been incorporated on the motion of Mr. Leuthold, from the present constitution. We had considerable debate in the Style and Drafting Committee as to what exactly was intended. That particular section of the present constitution has never been interpreted, probably never well be, and in any case, we thought that the intent of that old section was to protect the people from overzealous mayors, sheriffs, national guards and that sort of thing on the day of election. So, if you'll consider the old one, you'll see that somebody who was at large, having committed a felony at some time in the past, was exempt from arrest at the time of the election or near the polling place. So, we changed that to read: A qualified elector is privileged from arrest, unless apprehended in the commission of a felony or a breach of the peace, at the polling place or in going to or returning from. That's the extent of the comment, but I wanted to point out to you that we made a substantial change. We, ourselves, interpreted the meaning.

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CHAIRMAN FELT: Any discussion? If not, the question arises on the motion that when this committee does arise and report after having had under consideration section six, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Members of the Committee, we will now proceed immediately to Report Number Two of the Committee on Style and Drafting dealing with Constitutional Revision. Mr. Schiltz, if you're prepared now, you can again make a general statement if you wish to do that, and then we will hear motions.

DELEGATE SCHILTZ: All right, Mr. Chairman. You'll see that in this second section, we now have the format that we're going to use from now on. The first part of the report, we print the way the article will read, without having to read over additions and deletions of material. For the purposes of this committee report, we will work starting at page five where we have the material supplied us by the convention. Will you have the clerk read section one?

CLERK HANSON: (Reading) Section one, Constitutional Convention: The legislature by an affirmative vote of two-thirds of all the members, whether of one or more bodies, may

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at any time, submit to the qualified electors the question of whether there shall be a convention to revise, alter or amend this constitution. Mr. Chairman, section one.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section one of Report Number Two of the Style and Drafting Committee, it recommend it be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I expect here, for a little while, we're going to have some changes that we've made that possibly the committee does not accede to. We attempted to find out what the committee really intended and, in one or more cases, got memoranda from one or more members of the committee. So, at this point, be prepared to get some objections from the committee members or the authors. In section one, instead of the voters, we put in the qualified electors to conform with what the committee had done on suffrages and elections. We added titles where they were necessary. We used qualified elector instead of legal voter. I think that's the only change -- let me see. Oh, here we are. We struck the words, of the state, because we couldn't figure out anywhere else it might apply. Then we had some problem with whether there shall be an unlimited convention. According to the way the committee

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interpreted it, a convention is an unlimited convention. If you say unlimited convention, you then raise the specter of the possibility of a limited convention, which is no where defined so far as we could tell. I think I cleared that with Mr. Habedank and our comments cover that.

CHAIRMAN FELT: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. The General Government Committee had a meeting this morning and we're in agreement with everything in section one except the word, unlimited. The reason that Style and Drafting deleted the word, limited, was the reason that the committee had put it in in the first place. The committee felt that there should be no power to call a limited convention, that if a convention is called, it should be an unlimited one. To go further into the thinking of the committee, I'd like to defer to Delegate Habedank at this time.

CHAIRMAN FELT: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. Mr. Etchart has set forth simply the thinking of the committee. It was our feeling that any time the legislature and the people of the state of Montana spent the money and had people come in for a convention, that then there should be no question arise, but what the convention itself had the power to change or recommend changes as to any part of the convention.

CHAIRMAN FELT: Mr. Habedank. If you intend to make

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a motion, could you make it and then speak on it? If you do not wish to, you do not have to but --

DELEGATE HABEDANK: I will. Mr. Chairman. I move that the words -- the letter "n" -- and the word, unlimited, be reinserted into section one as it appears on line twelve, page five, and on line -- I can't find it. That would be a separate motion. I'm referring to section one and it would be in the corresponding section of the corrected copy without the deletions.

CHAIRMAN FELT: We'll work from page five.

DELEGATE HABEDANK: Fine. The section, as I would have it amended, would read: The legislature, by an affirmative vote of two-thirds of all the members, whether of one or more bodies, may at any time, submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter or amend this constitution. As Mr. Schiltz has pointed out -- Mr. Chairman.

CHAIRMAN FELT: Mr. Habedank.

DELEGATE HABEDANK: As Mr. Schiltz has pointed out, by their own interpretation, the fact that the word unlimited is in there, may prevent the calling of a limited convention. That was the exact intent of the committee, that there should be no limited convention. It is our feeling that the amendment procedures, which have been adopted by this convention, take care of any need for limited conventions. You can submit

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amendments as to a given subject. There's no limit as to the amount of amendments and that at any time in the future, if a convention is called, it should be unlimited and that no one should ever be able to challenge the right of the convention to tackle any portion of it. Therefore, we recommend that the words, an unlimited, be reinserted.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. The committee only wants to know what the convention wants in that connection, and that will be the committee's policy throughout. I do want to say, however, that the committee works from what we see and hear on the floor, and from the reports we get. We got left out on the primrose path on this one because the committee's comments said that unlimited was in the constitution we're now working with, and we got thrown off the track for a little while. Then, we decided that they didn't intend what they meant. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section one of Report Number Two of the Style and Drafting Committee, it recommend the same be adopted as amended.

CHAIRMAN FELT: We have not adopted the amendment as yet, Mr. Schiltz. The question arises on the motion of Delegate Habedank to amend section one, line twelve, page five

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of our report by inserting -- reinserting -- the words, an unlimited, which are crossed out on the report which is on your desks. Does anybody feel they need any further explanation of the question? If not, the question now arises on the motion to make this amendment. All those in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read section two.

Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section one, as amended, that it recommend the same be adopted.

CHAIRMAN FELT: The question now arises on the motion of Delegate Schiltz, that when the committee does arise and report after having had under consideration section one, as amended, it recommend the same be adopted.

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I move that this same amendment be made on line --

CHAIRMAN FELT: Mr. Habedank, if you're getting out of section one, we'll act on it and then proceed to section two.

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DELEGATE HABEDANK: I thought we had completed sectic one.

CHAIRMAN FELT: No. I did act that way, but we have not actually done so. The question now arises on the motion to accept section one, as amended. All in favor signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read section two.

CLERK HANSON: (Reading) Section two, Initiative for Constitutional Convention, subparagraph one: The people may, by initiative petition, direct the secretary of state to submit to the qualified electors, the question of whether there shall be a convention to revise, alter or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. The numbers shall include at least ten percent of the qualified electors, each two-fifths of the legislative districts. Subparagraph two: The secretary of state shall certify the filing of the petition in his office, and then cause the question to be submitted at the next general election. Mr. Chairman, section two.

CHAIRMAN FELT: Mr. Schiltz.

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DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section two of Report Number Two of the Style and Drafting Committee, it recommend the same be adopted. Before Mr. Habedank makes his motion to amend, I would like to say that we took up with Mr. Habedank the problem, at the bottom of that section, of where that two-thirds should come. We spelled it out so there can be no question that two-fifths, I guess it is, must come from each of those districts. Otherwise, we only made style and drafting changes. We used the words, qualified electors, instead of, voters of the state. We changed, must, to, shall, which will run throughout the constitution. I think that's all.

CHAIRMAN FELT: Members of the Committee, before we proceed, we are in this instance, taking up old subsection one and two at one time here in section two. Hereafter, we will be dealing with subsection by subsection. If anyone has any objection now to dealing with both one and two at the same time, he may say so.

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I move that line eighteen, page five, the words, an unlimited, be reinserted.

CHAIRMAN FELT: The question now arises on the motion that when this committee -- on the motion to amend section two, on page five, line eighteen by reinserting the words, an

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unlimited. All those in favor of the motion, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section two of Report Number Two of Style and Drafting Committee, that it recommend the same be adopted as amended.

CHAIRMAN FELT: Members of the Committee, the question now arises on the motion that when this committee does arise and report after having had under consideration section two, as amended, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read section three.

CLERK HANSON: (Reading) Section three, Periodic Session Submission: If the question of holding a convention is not otherwise submitted during any period of twenty years,

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it shall be submitted as provided by law, at the general election of the twentieth year following the last submission. Mr. Chairman, section three.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section three of Report Number Two of the Style and Drafting Committee, it recommend the same do pass. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Except for some stylistic changes, we made a significant change here that we took upon ourselves, and it should be explained to the convention. We added, as provided by law. The problem of the committee was by whom this should be submitted. The section was silent on the subject, and we thought that there should be some provision in there as to how it should be submitted, so we put, as may be provided by law, so the legislature can take care of that. Otherwise, we conceived that this thing could never be capable of execution. This is a substantive change.

CHAIRMAN FELT: Any discussion? If not, the question arises on the motion that when this committee does arise and report after having had under consideration section three, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

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CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Section four.

CLERK HANSON: (Reading) Section four, Call a Convention: If a majority of those voting on the question, answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether delegates may be nominated on a partisan or nonpartisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates. Mr. Chairman, section four.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section four of Report Number Two of Style and Drafting Committee, it recommend the same do pass. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: These are all stylistic changes, and wording changes, in order to make the thing read better.

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I don't think of any problem that should be called to your attention, other than what you can see, except if you will look at starting with line fourteen. At that point, we said the legislature shall, instead of, the legislature may. Then, in the next subclause, we changed shall to may. In fact, you can see we reversed it now. As we got it, it said, the legislature may determine whether the delegates shall be elected after nomination. We changed it to the legislature shall determine whether the delegates may be nominated on a partisan or a nonpartisan basis. We considered that to be something significant that ought to be done. If there's any objection, the committee should know it and debate it. Otherwise, there are no major changes.

CHAIRMAN FELT: Members of the Convention, is there any discussion on section four?

Mr. Brazier.

DELEGATE BRAZIER: Would the gentleman, Mr. Schiltz, yield to a question?

DELEGATE SCHILTZ: I yield.

DELEGATE BRAZIER: Directing your attention, Mr. Schiltz, to line nineteen on page six of your report, the whole sentence reads: They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates. Perhaps you can clarify some confusion which arises in my mind, with respect

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to the language determining the number of delegates.

DELEGATE SCHILTZ: Mr. Brazier, we aren't fooling with that because that's the way we got it. The only thing we did, as that read before we added, are the members, it said, they shall be elected at the same places and in the same districts as the legislative body determining the number of delegates. We added, as are the members of the legislative body. If you had a problem on that, you should have debated it in the Committee of the Whole when this problem was before the house.

DELEGATE BRAZIER: I hate to burden the proceedings of the convention. Perhaps you could answer the question. I am not sure I heard Mr. Schiltz's last remark. Did he say it was too late?

CHAIRMAN FELT: That was the general tenor of his comment. We're not dealing with matters of substance here.

DELEGATE BRAZIER: Thank you, Your Honor.

CHAIRMAN FELT: You can speak again. (Laughter) Members of the Committee, you now have before you the question-- the motion -- that when this committee does arise and report after having had under consideration section four, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

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CHAIRMAN FELT: The Ayes have it. Section five.

CLERK HANSON: (Reading) Section five, Convention Expenses: The legislature shall, in the act of calling the convention, designate the day, hour and place of its meeting and fix and provide for the pay of its members and officers and the necessary expenses of the convention. Mr. Chairman, section five.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section five of the Style and Drafting Committee Report Number Two, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: There are no changes here that need to be noted. We just changed legislative assembly to legislature, which is going to be the rule throughout, and otherwise, just stylistic changes.

CHAIRMAN FELT: Members of the Committee, the question now arises on the motion that when this committee does arise and report after having had under consideration section five of Report Number Two of the Committee on Style and Drafting, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

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CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Section six.

CLERK HANSON: (Reading) Section six, Oath Vacancies: Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature, if not otherwise provided by law. Mr. Chairman, section six.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section six of Style and Drafting Committee Report Number Two, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I don't pick up any significant changes here that need to be discussed. I think it's just mostly stylistic.

CHAIRMAN FELT: Members of the Committee, you now have before you the question on the motion that when this committee does arise and report after having had under consideration section six of Report Number Two of the Committee on Style and Drafting, that it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

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(No response)

CHAIRMAN FELT: The Ayes have it. Section seven.

CLERK HANSON: (Reading) Section seven, Convention Duties: The convention shall meet after the election of the delegates and prepare such revisions, alterations or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification, or rejection as a whole, or in a separate article for amendments as determined by the convention at an election appointed by the convention for that purpose, not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration or amendment shall take effect. Mr. Chairman, section seven.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section seven of Report Number Two of the Style and Drafting Committee, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Once again, no changes. Nothing that should be noted; merely style changes.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report after having

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had under consideration section seven of Report Number Two of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Section eight.

CLERK HANSON: (Reading) Section eight, Amendment by Legislative Referendum: Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether of one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns, unless the amendment provides otherwise. Mr. Chairman, section eight.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section eight of the Style and Drafting Report Number Two, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

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DELEGATE SCHILTZ: What we did here, really, was to combine two sections, sections eight and nine. We considered that they were the same subject. We changed the heading from Constitutional Amendment by the Legislature to read Amendment by Legislative Referendum. Otherwise, only style changes.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report after having had under consideration section eight of Report Number Two of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read subsection one of section nine.

CLERK HANSON: (Reading) Section nine, Amendment by Initiative, subsection one: The people may also propose constitutional amendments by initiative. Petitions, including the full text of the proposed amendment, shall be signed by at least ten percent of the qualified electors of the state. The numbers shall include at least ten percent of the qualified electors in each of the two-fifths of the legislative districts. Mr. Chairman, subsection one, section nine.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

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DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration subsection one of the renumbered section nine of the Committee on Style and Drafting Report Number Two, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: You'll note that I said this was renumbered nine since it combined eight and nine. The only change we made here of any significance is that the number of signers, we spelled out because of what we had done in section two of this same article.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report after having had under consideration subsection one of renumbered section nine Report Number Two of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read subsection two of section nine.

CLERK HANSON: (Reading) Subsection two: The petition shall be filed with the secretary of state who shall check and certify the validity of the signatures thereon. If

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the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law, twice each month for two months previous to the next, regular, state wide election. Mr. Chairman, subsection two.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration subsection two of section nine of Report Number Two of the Style and Drafting Committee, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: We made a change here that we're going to have some trouble with. In the interest of tight styling, we struck the words on line twelve, caused the same to be checked, and wrote in just, checked. Now, Mr. Habedank advises me that the secretary of state has no facilities to do that checking, and he may want that language restored.

CHAIRMAN FELT: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I move that subsection two of section nine be amended by putting a period after the word, state, in line twelve, and striking all the remaining words so that the next sentence will read beginning on line fourteen, if the petitions are found. Mr. Chairman.

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CHAIRMAN FELT: Mr. Habedank.

DELEGATE HABEDANK: First, before I proceed to explain what we've done, I want to commend the Style and Drafting Committee for what I consider one of the finest jobs of revamping English I've seen. If they are as thorough and as consistent in the rest of the constitution as they've been in the first two articles, I think we will have a model that other states will be copying for years. The change they have made in section two can, in our opinion, cause considerable trouble. The secretary of state's office has no facilities for checking and certifying petitions. As a practical matter, these are done by the clerks and recorders throughout the state, and then they're filed with the secretary of state. We feel the amendment will meet this situation and make the words read similarly to what they will read in the petitions on initiative and other matters which are to be filed. We think that this will be adequate and will meet the approval, we hope, of Style and Drafting as they attempt to take words out of the constitution.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Style and Drafting, I'm sure, has no problem on this. On behalf of the committee, I thank Mr. Habedank for his enconium. After I lost my ewe lamb yesterday, this may be all I'm going to get out of this place. (Laughter)

CHAIRMAN FELT: Mr. Clerk, would you read the motion

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before the convention now?

CLERK HANSON: (Reading) Mr. Chairman. I move to amend on page eight, subsection two of section nine, beginning on line twelve by placing a period after the word state and deleting the remainder of the language in line twelve, thirteen and the first two words in line fourteen, so that it would read: The petition shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors --

CHAIRMAN FELT: Does everyone feel satisfied that they have the substance of the motion before them? The question now arises on the motion to amend subsection two as stated. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report after having had under consideration subsection two of section nine, of the Report Number Two of the Style and Drafting Committee, it recommend the same be adopted as amended.

CHAIRMAN FELT: Members of the Committee. The question arises on the motion that when this committee does

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arise and report after having had under consideration subsection two of section nine of Report Number Two of the Committee on Style and Drafting, as amended, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read subsection three.

CLERK HANSON: (Reading) Subsection three: At the election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval unless the amendment provides otherwise. Mr. Chairman, subsection three.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration subsection three of section nine of Report Number Two of the Style and Drafting Committee, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: There are no significant changes there -- only for style.

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CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report after having had under consideration subsection three of section nine of Report Number Two of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read section ten.

CLERK HANSON: (Reading) Section ten: Petition Signers: The number of qualified electors required for the filing of any petition provided for in this article shall be determined by the number of votes cast for the governor in the preceding general election. Mr. Chairman, section ten.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section ten of Report Number Two of the Style and Drafting Committee, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: As you will see, we completely rewrote this particular section and there may be a problem here

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so far as the committee is concerned. As it reads now, there's no problem with the language. That's approved to some extent. As it reads now, the number of votes in this entire article are necessary to make up two-fifths wherever it's required, shall be determined by the number of votes cast for governor in the preceding general election. I don't know if anyone has any trouble with that or not, or if it's all the votes cast for two candidates, or if it's all the votes cast for one candidate. It possibly should be spelled out.

DELEGATE HABEDANK: Is a motion in order?

CHAIRMAN FELT: You moved the adoption, did you not Mr. Schiltz?

DELEGATE SCHILTZ: Yes.

CHAIRMAN FELT: Then, a substitute motion would be in order.

DELEGATE HABEDANK: Mr. Chairman.

CHAIRMAN FELT: Mr. Habedank.

DELEGATE HABEDANK: I move that section ten be amended on line four, page nine, by adding between the words for and the word governor, the words, the office of, so that line four would read, for the office of governor in the preceding general election. Mr. Chairman.

CHAIRMAN FELT: Mr. Habedank.

DELEGATE HABEDANK: The committee approves of the rewording of section ten as it has been done by the Style and

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Drafting Committee. However, we feel that if the words, just for governor are left in, the comments should show that it is the intention of this convention that it should be the votes cast for the office of governor, rather than just for governor. We feel that in the interest of clarity and to prevent any further questions arising in the future, the three additional words should be in there. We have inserted them elsewhere in like wording in initiative and referendum petitions, so that wherever we have drawn sections for the constitution, in all instances, it reads for the office of rather than just for the position.

CHAIRMAN FELT: Is there any further discussion? We have before us the substitute motion to amend. That's the way it was put, wasn't it, Mr. Habedank? Yours was a substitute motion?

DELEGATE HABEDANK: Just a motion to amend.

CHAIRMAN FELT: A motion to amend, all right. If there's no further discussion, the question now arises on the motion to amend. We'll have the clerk read the amendment.

CLERK HANSON: (Reading) Mr. Chairman. I move to amend on page nine, section ten of the Style and Drafting Report Number Two in line four, by inserting the words, the office of, between the words governor and for.

CHAIRMAN FELT: You've heard the amendment. All those in favor of the motion to amend will signify by voting

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Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Members of the Committee, the question now arises -- Mr. Schiltz, perhaps you should restate your motion to adopt, as amended.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section ten of the Style and Drafting Report Number Two, that it recommend the same be adopted as amended.

CHAIRMAN FELT: Members of the Committee, you now have before you the question that when this committee does arise and report after having had under consideration section ten, as amended, of Report Number Two of the Committee on Style and Drafting, it recommend the same be adopted. All those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read section eleven.

CLERK HANSON: (Reading) Section eleven: Submission: If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be

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voted on separately. Mr. Chairman, section eleven.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report after having had under consideration section eleven of Style and Drafting Report Number Two, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: We've only made style changes here. I don't see anything that needs to be called to the attention of the committee.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report after having had under consideration section eleven of Report Number Two of the Committee on Style and Drafting, that the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report after having had under consideration Report Number Two of the Style and Drafting Committee that it recommend the same be adopted as amended.

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CHAIRMAN FELT: Members of the Committee, you now have before you the question that when this committee does arise and report after having had under consideration Report Number Two of the Committee on Style and Drafting, as amended, it recommend the same be adopted. All those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. For the information of the members of the Committee of the Whole, we'll be going in and out of the Committee of the Whole this morning, and because we have other business under the business of the Committee of the Whole, such as the Natural Resources Proposal today, we'll ask leave of the Committee and I'll make the motion now so that you understand. I so move that we pass consideration at this sitting of any further business under Committee of the Whole, Mr. Chairman.

CHAIRMAN FELT: Mr. Eskildsen. Is your explanation sufficient for your purposes, Mr. Eskildsen?

DELEGATE ESKILDSEN: I think so.

CHAIRMAN FELT: The question before the Committee is to pass consideration, at this time, of any further business

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to come up in Committee of the Whole. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that the Committee of the Whole rise in final report.

CHAIRMAN FELT: Without objection, Members of the Committee, we will revert to the end of Report Number One of the Committee on Style and Drafting.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I think I neglected to offer the entire Report Number One. At this time, I move that when this committee does arise and report after having had under consideration Report Number One of the Style and Drafting Committee, it recommend the same be adopted.

CHAIRMAN FELT: Mr. Schiltz. Would it satisfy you and parliamentary procedure if we combined in one motion to adopt Reports One and Two, as amended?

DELEGATE SCHILTZ: Fine.

CHAIRMAN FELT: We can take it at this time. Members of the Committee, the question arises on the motion that when this committee does arise and report after having had under

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consideration Reports Numbers One and Two, as amended, of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that we rise in final report and refer Constitutional Revision Number Two and Suffrage and Election Number One proposals to Style and Drafting.

CHAIRMAN FELT: Do what, Mr. Eskildsen? Reports Numbers One and Two --

DELEGATE ESKILDSEN: Excuse me, to Order of Business Number Five.

CHAIRMAN FELT: Final Consideration of Proposals. Does everyone understand? Mr. Schiltz, where are you? Would you like to perhaps make just a brief statement as to the effect of this motion because it's the first time the motion has come before the convention?

DELEGATE SCHILTZ: I thought I was all through, Mr. Chairman.

CHAIRMAN FELT: Well, I could have called on someone else. I didn't notice you were busy. Mr. Murray, would you like to discuss this since you're chairman of the Committee

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on Rules.

DELEGATE MURRAY: Mr. Chairman. The explanation is that after we have completed the work in Committee of the Whole on the reports from Style and Drafting, and the reports have been adopted section by section, the articles will be referred to Order of Business Number Five and voted on finally there without debate. That will be, for those experienced with legislative action, a third reading Order of Business. Mr. Eskildsen's motion is to that effect. Now today, because we have not announced that we have any business under Order of Business Number Five, we will not be going to that Order of Business. We'll be going to Order of Business Number One and advancing directly to Order of Business Number Ten again, so we will not be casting this. You should know a day in advance that you will be required to be here to vote under Order of Business Number Five because that's the roll call stage and everybody will want to cast their votes at that time, I'm sure.

CHAIRMAN FELT: The clerk will now reread the motion that is before us which, in essence, is to have the Committee rise and finally report, and to refer these two reports to Order of Business Number Five, Final Consideration of Proposals. I believe with that explanation, we won't have to ask the clerk to reread it. Does anyone have any questions about what you're about to vote on? If not, all those in favor will

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signify by voting Aye.

DELEGATES: Aye

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it.

(Committee of the Whole Chairmanship assumed by Mr. Brown.)

CLERK HANSON: March 1, 1972. Mr. President, we your Committee of the Whole, having had under consideration Report Number One on Suffrage and Elections of the Committee on Style and Drafting recommend as follows: That section one be adopted; that section two be adopted; that section three be adopted; that section four be adopted; that section five, section six be adopted. On Report Number Two on Constitutional Revision, the Committee on Style and Drafting recommends as follows: section one be amended line twelve, page five of the Style and Drafting Report on Constitutional Revision by reinserting the words, an unlimited; that section one be adopted as amended; that section two be amended in line eighteen, page five of the Style and Drafting Report on Constitutional Revision by inserting the words, an unlimited; that section two be adopted as amended; that section three be adopted; that section four be adopted; that section five be adopted; that section six be adopted; that section seven be adopted; that section eight be adopted; that section nine, subsection one, be adopted;

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that section nine, subsection two, be amended by placing a period after the word, state, on line twelve, page eight, and strike the remaining language on lines twelve, thirteen and the first two words on line fourteen; that section nine, subsection two be adopted as amended; that section nine, subsection three be adopted; that section ten be amended on line four, page nine, by inserting the words, quote the office of end quote, before the words, for governor; that section ten as amended be adopted; that section eleven be adopted; that Report Number Two of Style and Drafting on Constitutional Revision be adopted; that the Report on Suffrage and Elections be adopted; that the Committee pass consideration at this sitting of other business on General Orders; that the Committee rise and report and that Suffrage and Election and Constitutional Revision Proposals be placed on Order of Business Number Five. Signed, Felt, Chairman.

DELEGATE FELT: I move the adoption of these reports.

VICE PRESIDENT BROWN: Thank you for the motion, Mr. Felt. All those in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT BROWN: Opposed.

(No response)

VICE PRESIDENT BROWN: Voted and so ordered. Now be on Order of Business Number Five -- or ten.

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DELEGATE ESKILDSEN: Mr. President. I move the convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

VICE PRESIDENT BROWN: You've heard the motion of Mr. Eskildsen. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT BROWN: Opposed, No.

(No response)

VICE PRESIDENT BROWN: So ordered.

(Committee of the Whole Chairmanship assumed by Mr. Felt.)

CHAIRMAN FELT: Mr. James.

DELEGATE JAMES: I would like to report myself present.

CHAIRMAN FELT: Mr. James is present. The Committee of the Whole will please be in order. I wish to personally congratulate the Members of the Committee. Perhaps a few words now might be in order. I think that I might acknowledge that we're moving along faster, and this is to be expected as we all become accustomed to the handling of business in Committee of the Whole. We have a rare opportunity, I believe today, due to the fact that our Committee on Natural Resources has done an excellent job both by being reasonably brief, and by being accurate, that we can complete this work today. We will give everyone full opportunity, certainly, to discuss this

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matter which is of such great importance to all of us and to all the people of Montana. I might just mention that yesterday, since we dealt with the article on judiciary, the lawyers necessarily were quite active and I'm sure that they probably have tired tonsils today. My glasses aren't going to function very well when the lawyers stand up today. To commend those who may be thinking of being candidates for higher office, they can make their political statements elsewhere rather than on the floor. We will follow the following procedure which, I believe, has been agreed upon. After the clerk has read the history and title of the article, we will call upon the chairman of the committee to make a general statement reviewing the report before any motions are before the body, and then we will explain the remaining procedure when we have completed that. I think it's important that we realize the assumptions under which we do operate here. One is that everyone present can not only read and write, but can think, and that they have read the report. Second, that our committee system functions. The members of this committee have given the detailed thought to this consideration that each of us gave to the matters that came before our committees; that there is some sort of a presumption that they have given it due consideration and are now submitting it to us. So, we'll have the clerk now read the history and title of each article.

CLERK HANSON: (Reading) Montana Constitutional

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Convention, 1971-1972, Natural Resources and Agricultural Committee Proposal --

CHAIRMAN FELT: Mr. Clerk, have you completed --

CLERK HANSON: Natural Resources and Agricultural Committee Proposal Number Two, Date Reported, February 18, 1972, Louise Cross, Chairman, Gysler, Vice Chairman. Be it proposed by the Natural Resources and Agricultural Committee, that there be a new article on environment and agriculture to read as follows: Mr. Chairman, title and history.

CHAIRMAN FELT: The delegate, Mrs. Cross.

DELEGATE CROSS: Mr. Chairman.

CHAIRMAN FELT: Mrs. Cross.

DELEGATE CROSS: I move that when this committee does arise and report after having under consideration the new article on Natural Resources and Agricultural Proposal Number Six, that it recommend that the same be adopted.

CHAIRMAN FELT: Mrs. Cross. Did you wish to present a general statement before presenting your motion? Your motion that you made went then to section one -- subsection one, was it?

DELEGATE CROSS: No, I still wish to make a statement.

CHAIRMAN FELT: Well, what was the motion again, then? Do you wish to make any motion at all before you make your statement?

DELEGATE CROSS: No, I don't think so.

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CHAIRMAN FELT: All right, we'll hear your statement then, Mrs. Cross.

DELEGATE CROSS: Thank you, Mr. Chairman. Also, thank you for considering a novice at this parliamentary procedure. Fellow delegates, of the ten reports which have come out of the substantive committees of this Constitutional Convention, the shortest is that of the Natural Resources and Agricultural Committee. Most of the twenty-nine pages in the report are concerned with the contents, the letter of transmittal, explanatory notes and appendixes. The articles themselves are relatively short. One is entitled Environment and Natural Resources and the other, Agriculture. Both of these deal with areas of vital concern to us Montanans. The first is divided into four sections: protection and enhancement, reclamation, water rights and cultural resources. The second is divided into two parts: the department of agriculture and the right to special levies. After many hours and days of deliberations and listening to witnesses, and trying to digest all sorts of information and testimony, the committee was able to agree on all but one section of the articles. That one was the one on the environment itself. The committee split on this seven to two. Those two of us were outvoted as to the content of the statement, and the explanation in the notes in this report. I also have the dubious distinction of being the only committee chairman who was not able to get out a

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minority report of my own wording. I disagree with the statement on page six, that we are recommending the strongest constitutional environmental section of any existing state constitution. It is chiefly to this issue that I speak today. I consider sections two and three, not only weak, but possibly restrictive in a direction which is not readily apparent. When the committee dealt with the section on water and water rights, and the department of agriculture, they needed no convincing of their importance. Water is at a crucial point in Montana history. Use it or lose it. Agriculture is in a tenuous position because it is rapidly losing its voice, and its representation in legislative halls. On these two points, the common danger was recognized. But, the issue of the environment is an issue of recent vintage. Constitutionally speaking, it is a new concept and we must begin at point zero. After a month of trying to come to grips with the issue, I began to feel that the environment must be like the proverbial weather. We all talk about it, but doing something about it is a horse of a different color. It is the important issue of our time. In this area, we can look ahead. If we put our minds to it, we can really do something great and good for those future generations to which we give lip service. There probably isn't a person in this room who would deny that taking care of our environment is of good sense. How we ultimately deal with the issue will be the measure of our sincerity. I have spoken

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twice on this issue before committee hearings, and I have urged the adoption of a strong article. The fact that the language I proposed was not adopted by the majority of the committee is not what is important. What is important is that we face up to this responsibility here on convention floor, and adopt language that will do the job. Yesterday, our president reminded us that this constitution is not for today, or even for tomorrow, but will stand the test of time. He reminded us that we must be leaders. Project yourselves fifty years into the future, if you will, and from that vantage point look back at us here in convention hall. Ask yourselves if we are seizing our moment in history to do something that makes us great. Pollution in any form is an expensive business. A year ago, it was estimated that water pollution is costing the United States twelve point eight million dollars per year in damages. The United States Environmental Protection Agency estimates that air pollution costs the nation some sixteen point one million dollars a year in material losses. I have not seen figures that tell us what air and water pollution costs the state of Montana, but it must be a considerable sum. The sad part of this is that we recognize the problem, but so far we have been unable to do anything about it. We even seem unable to learn the bitter lessons other states have had to learn. If you were listening to the news last night, you would have heard that West Virginia has stopped issuing permits

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for strip mining. It took a tragedy of a broken dam, the death of many, and the wiping out of a town, to bring this issue to a head. One of our fellow delegates remarked that we are a crisis oriented people. Rarely do we do anything until we are forced to do so. Coal underlines the eastern third of this state. Do we have to wait until we have the equivalent of twenty great walls of China marching north and south, from border to border, and just as useless, before we realize that we've destroyed the precious resources of a productive land? Many of our natural resources are nonrenewable. When they are gone, the treasure of the treasure state will also be gone. When you begin deliberations on this article, and when we begin with the inevitable amendments to it, ask yourselves some questions. Why do people come to visit this state anyway? Are our streams and rivers worth anything to us? Does the air we breathe contribute to our general health and welfare? Do we have to leave everything up to the legislature and hope that they will do the job? Do we, as individuals, have anything at all to say about how we can protect ourselves from pollution? Can we construct a framework within which the means and rights are provided to protect these rights? Let us exercise prudent judgment. Thank you, Mr. Chairman.

CHAIRMAN FELT: Thank you, Mrs. Cross. The next procedure we're going to file is to have the clerk read all of section one, all three subsections. There will be no motions

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made at this time. We've having it read, not only for the benefit of the delegates, but particularly for those persons interested enough to come here and observe the proceedings, so they will know just exactly what is before us. After that, we will go back and take them up subsection by subsection. The clerk will now read all of section one.

CLERK HANSON: (Reading) Section one, Protection and Enhancement: The state of Montana and each person must maintain and enhance the environment of the state for present and future generations. Subsection two: The legislature must provide for the administration and enforcement of this duty. Subsection three: The legislature is directed to provide adequate remedies for the protection of the environmental life support system from degredation and to provide adequate remedies to prevent unreasonable depletion of natural resources. Section one, Mr. Chairman.

CHAIRMAN FELT: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman.

CHAIRMAN FELT: Mr. McNeil.

DELEGATE McNEIL: Your committee proposes and recommends, in its proposal, the strongest constitutional environmental section of any existing state constitution. Subsection one requires the state and each person, which of course, includes all corporations and all legal entities, as well as individuals, to maintain and enhance Montana environment for

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present and future generations. Although our committee chairwoman does not agree that this is the strongest, no one as yet shown me a state constitution that is stronger. There is no state constitution anywhere that requires the affirmative duty to enhance the environment. In addition, the provision drafted by the majority requires that we, at least, at a minimum, maintain the present Montana environment. Your committee considered, at length, an exhaustive list of descriptive adjectives to precede the word environment, such as healthful, pleasing, quality, high quality and finally my very own, unique, and concluded that no descriptive adjective was adequate or necessary. This was not considered by the majority to be a compromise, but rather an acknowledgement of the present Montana environment as encompassing all of those descriptive adjectives. Constitutional provisions of other states were studied, but none were considered adequate, as no other state has Montana's environment. Therefore, your committee felt that the best recommendation is to require that all must maintain and enhance the Montana environment. Subsection two mandates the legislature to administer and enforce this duty to maintain and enhance the Montana environment. Your committee was urged by many to detail the manner of accomplishing this duty. The temptation to legislate in the constitution was resisted and the confidence reposed in the legislature. To those who may lack such confidence in the

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elected representatives of the people, the clear and concise duty to maintain and enhance the environment cannot be contravened. Your committee considered two delegate proposals. These were the only two that were presented that were other than the strong statement which the majority is now submitting to you, which declared in substance, that the state of Montana hold in public trust the environment for the benefit of all the people. The majority felt it unnecessary to have the state hold in trust all land, including of course, privately owned real property, for the benefit of all the people of the state in order to accomplish the protection of our environment. In addition, the majority felt it unwise to experiment by incorporating into the constitution, a quote public trust close quote, which was not clearly defined to the committee. Of all of the persons who testified before our committee, there were not two who used the same definition for that phrase, and which phrase is not contained in the constitution of any other state, and which exists in its infancy, in only two states by legislation. Subsection three mandates the legislature to provide adequate remedies to protect the environmental life support system from degredation. The committee intentionally avoided definitions to preclude being restrictive, and the term environmental life support system is all-encompassing, including but not limited to air, water and land, and whatever interpretation is afforded this phrase by the

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legislature and courts, there is no question that it cannot be degraded. I might further add that that phrase, environmental life support system, was an essential part of both of the delegate proposals referring to the public trust, and has been incorporated into the majority proposal. Subsection three further mandates the legislature to provide adequate remedies to prevent unreasonable depletion and degredation of natural resources. Although it is recognized that some nonrenewable natural resources are to be consumed, this provision permits the legislature to determine whether the resources being unreasonably depleted, and requires preventive remedies. The committee considered proposals which would give individuals a right to sue without the necessity of showing some damage. The majority concluded that Montana's present law providing for class action under which litigation is presently pending, involving multitudes of claimants against a single alleged polluter, is adequate. However, the majority feels that this is not a compromise because the majority feels -- the majority proposal -- requires the legislature to provide whatever remedies are necessary to prevent degredation and to prevent unreasonable depletion. The majority of the committee believes that this is the best article for the protection of the Montana environment for its people. I might also add that there was distributed to our desks this morning, an example of a right to sue as incorporated in North Dakota and it says:

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Any person has a right to a healthful environment. The majority felt that the use of the word, healthful, would permit those who would pollute our environment to parade in some doctors who could say that if a person could walk around with four pounds of arsonic in his lungs or SO_2 gas in his lungs, and wasn't dead, that would be a healthful environment. The majority strongly believes that our proposal is stronger than using the word, healthful. This proposal further would provide the right to sue anybody, through appropriate legal proceedings, and then modify it by saying, subject to reasonable limitation as the legislative assembly may provide. The majority feels that our subparagraph three does precisely this. It requires the legislature to provide adequate remedies and leaves it, from that point, to the legislature. Thank you.

CHAIRMAN FELT: The delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report after having had under consideration section one, subsection one of Proposal Number Six, that it recommend the same be adopted.

CHAIRMAN FELT: Mr. Murray is making these perfunctory motions in order to relieve the Members of the Committee of that extra chore, and not for the purpose of speaking on the motions. So, the matter before the committee at this time, is subsection one of section one. A motion has been made that we adopt it as it appears in the committee report. This is now

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open for discussion. Before I recognize you, Mr. James, I'd like to call upon Delegate Scanlin to undertake a small chore on behalf of the Chair. I would like you to keep a score sheet please of the number of times that lawyers are recognized and rise. For those purposes today, we will not count either Mr. McNeil or Mr. Brazier as attorneys since they will be speaking as members of the committee. In the event, any of them speak longer than five minutes, put an asterik after their names please, Mr. Scanlin.

CHAIRMAN FELT: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. I feel that an apology is due for any untoward thoughts I had toward my fellow delegates who may be members of the legal profession, and I apologize.

CHAIRMAN FELT: The apology is certainly accepted if you feel it necessary. I might say that the Travelling Martin Trophy might be presented to Delegate Foster. I believe he remained totally silent yesterday, and I believe that Reverend Harper might be putting in his bid to achieve it for today.

Delegate Harper.

DELEGATE HARPER: Mr. Chairman. I just want to say that I know, or at least I hope, this is being done in fun about lawyers. I think we all recognize that we are dealing, under the constitution, with a legal document, basic law. I

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just simply rise to say that I have appreciated very much a good many of the comments that lawyers have made. I am not familiar with law. The first thing I do in a law case, is go to a lawyer. I think most of the rest of us feel that way. So, I would just like to say that I don't share in the idea that the lawyers are any less members of this group, and should be restricted in any way from their speaking, any more than the rest of us. I just felt contrained to say that. I'm not running for any office that I want the lawyers' vote. (Laughter)

CHAIRMAN FELT: Thank you for the defense of the attorneys. They can, perhaps, take care of that too. (Laughter) The point is that there's a course given in law school on water law, and I don't think we need the whole course today. (Laughter)

Mr. James.

DELEGATE JAMES: Mr. Chairman. I only spoke once yesterday and once since. I am not a lawyer. I have nothing against lawyers, and I have no daughters, so I have no worries. (Laughter) I was just kidding, Jim, really.

CHAIRMAN FELT: That's a relief. (Laughter)

DELEGATE JAMES: I would like to amend line ten of section one. Despite Mr. McNeil's statement there -- I hadn't heard it before I proposed this amendment, I would like to insert -- remove, the, and insert, a clean and healthful. Delete, of the state, and insert, for the protection and enjoy-

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ment of present and future generations. To me, on reading the first section there, it seemed rather bland. I felt as though these adjectives perhaps would strengthen the article. I would like to read a couple of lines from a poem in the Saturday Review. Man has kicked away his birthright. Now, we find to our despair, we have fouled our lakes and rivers. We have fouled our very air. It is time to face the music. It is time to be aware. These words are from a poem by Francis Hadge. Warning from main rivers. I have been to all parts of the United States. Having visited most of these sister states, I am glad that Montana still has relative virginity, if one can have such a thing.

CHAIRMAN FELT: The gentleman, Mr. James, has moved to amend subsection one. We will have the clerk reread the amendment and then we'll permit further discussion if anyone wishes.

CLERK SMITH: (Reading) Section one, Protection and Enhancement, subsection one: The state of Montana and each person must maintain --

CHAIRMAN FELT: Mr. Clerk, I think you can just read the motion as it was presented to us. Do you have a copy of it there?

CLERK SMITH: Yes. Mr. Chairman. I move to amend section one, subsection one, page three, line ten by striking the word, the, following the word, enhance, and the words, of

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the state for --

CHAIRMAN FELT: Pause a minute while we get that down. Anybody want that reviewed?

DELEGATES: Yes.

CHAIRMAN FELT: Review that again please.

CLERK SMITH: Page three, line ten, by striking the word, the, following the word, enhance, and the words, of the state --

CHAIRMAN FELT: This is another strike-out?

CLERK SMITH: Yes.

CHAIRMAN FELT: Strike the word, the, which is the first word on line ten. Then he also strikes the words, of the state for, following the word environment. Proceed, Mr. Clerk.

CLERK SMITH: -- following the word, environment, and inserting in lieu thereof, the following words, a clean and healthful. Following the word, enhance, and inserting, for the protection and enjoyment of, following the word, environment.

CHAIRMAN FELT: Now, that was a little difficult to catch, so we'll do it again if anybody would like. Oh, they're giving out copies now? Fine. The gentlemen, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. As vice chairman and one of the seven who approved this report, I resist the

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motion to amend. The reasons were stated by Mr. McNeil when he went through the comments on our section. I would certainly hope that before people amend things, that they take time and look to see what they're amending, and if there's any comments by the committee in regard to it. We feel -- or I feel, anyway, that this amendment weakens, not strengthens, this article.

CHAIRMAN FELT: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. They said they were handing this out, but what's being handed out is not -- So, I'd like to have that read in its entirety as it's amended. Forget the striking out, just read it.

CHAIRMAN FELT: That's fine. I thought they were handing out the same one. It turns out it's a different one that's being distributed. There is another amendment that has been submitted. Perhaps they're both being handed out, Mr. Blaylock. Another amendment has been offered to subsection one of section one. The author did not include his name, so we do not know who it is. Perhaps he will feel that the proposal that is before us now from Mr. James, covers his point too. If not, would he please let his identity be known so we'll be prepared for it.

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I am a member of the Natural Resources Committee, one of the seven on the majority report here. I, too, resist any change in section one.

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Now, we had more than ninety-five separate witnesses before us and over one hundred sixty-five appearances. Many times, members of the committee, including myself, asked people what healthful meant. No one could define it. This was one of the reasons, as Delegate McNeil said, that we took it out, because no one knows what it is. The question came up many times, of course, about this social security for lawyers. That was used many times in our committee by using words that no one could define. I think that after four weeks of extensive work, night sessions, hundreds of witnesses before us, I'm sure that we have heard every argument that can be proposed to change this article from what we came out with. I believe it is the best. It's the strongest. There's no state has as strong a one as this. For those that would like it stronger, I think they should think about this a little, because they may come out with one that is not as strong as this one. Thank you, Mr. Chairman.

CHAIRMAN FELT: The delegate, Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, would Mr. Kamhoot yield to a couple of questions please?

DELEGATE KAMHOOT: Yes, I'll yield.

DELEGATE CAMPBELL: All right. You are familiar, Mr. Campbell, with the Illinois provisions?

DELEGATE KAMHOOT: Some.

DELEGATE CAMPBELL: And you feel those are weaker

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than the provisions that you have recommended in your committee?

DELEGATE KAMHOOT: Well, I think so.

DELEGATE CAMPBELL: Would you be for adopting the weaker provisions that would give the citizens the right to sue as requlated by the legislature?

DELEGATE KAMHOOT: Repeat that, would you, Bob?

DELEGATE CAMPBELL: Section two of the Illinois provision provides that a citizen shall have the right to sue as defined by the legislature. Would you be in favor of adopting this weaker provision?

DELEGATE KAMHOOT: Now, Bob, I don't have section two of the Illinois Constitution before me. I've read volumes and volumes of other state constitutions, so I don't know exactly what it says.

DELEGATE CAMPBELL: All right. I will then read you section two.

CHAIRMAN FELT: Mr. Campbell, do you wish to speak?

DELEGATE CAMPBELL: Yes, I do.

CHAIRMAN FELT: Let's do that if you have something to add.

DELEGATE CAMPBELL: Okay. Thank you, Mr. Chairman. I rise in support of Mr. James' motion to amend section one. I feel that the present section, as presented by the committee, stating that the state of Montana will maintain an environment

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is absolutely worthless. What this says, in effect, instead of being the strongest in the nation, is that there is no type of standard whatsoever to define this environment. A clean and healthful environment is not defined. It would be defined by the Montana supreme court and the legislature that we are hoping will initiate effective controls. All of this says is that they will enhance the environment. It does not describe whether it is good environment, bad environment, polluted environment or anything. I think all it means is that the legislature in the future will not prohibit the citizens' right to breathe, regardless of it it's clean air, bad air, or anything else. I think that clean and healthful is a positive step forward. I think that the supreme court and the legislature can work toward this goal, which is in the Illinois Constitution, and which was recommended for the North Dakota Constitution. I think the enjoyment and protection of this is also a meaningful addition to this section one. I don't feel that this is the strongest in the nation and certainly, if adopted without the amendment, I feel it would be an insult to the people that did want something effective in this constitution. Thank you, Mr. Chairman.

CHAIRMAN FELT: The delegate, Mr. Anderson.

DELEGATE JOHN ANDERSON: I am also a member of the committee and one of the seven who recommends the article that is before us. I believe that section one of the article points

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it out very clearly to us. I think that we have a most unique situation here in our great state of Montana. We, presently, I think have one of the best environments perhaps of any state of the union. I feel that section one, subsection one, spells it out very clearly that we must maintain this quality environment that we have, and not only maintain it, but improve it as the article says, to enhance it. I personally object to the amendment of the section.

CHAIRMAN FELT: The delegate, Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman. I will probably be up many times today, because I believe that the environmental article is probably the most important thing we will be dealing with in this Constitutional Convention. I rise in support of Mr. James' amendment simply because in the presence of proposed section one, there is no qualifying adjective used for the environment. Mr. Kamhoot brought up the question of what is healthful and what is quality, or what is clean. These two adjectives have been used in most of the environmental article and environmental law throughout the United States. I refer you to the Revised Codes of Montana, Title Sixty-Nine, which uses the word, healthful. The Federal Environmental Protection Act also uses the words clean and healthful. There will be no question as to what these words mean because these words will be subject to a great deal of litigation. I think it's clear that we do not want to maintain the present environ-

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ment for example, in Missoula or Columbia Falls, or other places since the rate of death by cancer is twice as high in Butte and Anaconda as it is anywhere else in the state of Montana. I think we need qualifying adjectives to enable the supreme court to interpret what kind of environment we want. Without these qualifying adjectives, the court is going to have a very hard time.

CHAIRMAN FELT: The delegate, Mr. Rebal.

DELEGATE REBAL: Mr. Chairman. I resist Mr. James' amendment. I believe clean and healthful to be comparative in nature. Cleaner than what, or more healthful than what? Thank you.

CHAIRMAN FELT: The delegate, Mr. James. Do you wish to close?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I would like to ask a question here of Delegate James.

CHAIRMAN FELT: Will the gentleman yield?

DELEGATE JAMES: Yes, I will, Mrs. Bates.

DELEGATE BATES: Mr. James, when you mention to protect and improve, does this mean that in future years that perhaps a business or a building that might go up might not improve the environment to many people. Could it stop future building and things of this type?

DELEGATE JAMES: My amendment does not say improve.

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It says for the protection and enjoyment.

DELEGATE BATES: Oh, enjoyment. I beg your pardon. I thought it was improvement.

DELEGATE JAMES: You know what enjoy means, don't you? (Laughter)

CHAIRMAN FELT: The gentleman, Delegate Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman and fellow delegates. I rise in support of Mr. James' amendment. It seems to me that when Charles Lindberg was with us the other day, he was saying some very timely things. When I was introduced, I was thinking that maybe he would dwell on his past solo performances. I was very moved by his future orientation. Nothing is as important that we will do here, as guarantee the future of our citizens and those who come from all over this country and the world, to enjoy the sense of cleanliness and the health of our environment in Montana. I think it does strengthen it to put these words in. I'm for his amendment.

CHAIRMAN FELT: The delegate, Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. It seems to me that Delegate James is on the right track in this matter. If we take the words, maintain and enhance. Maintain means to keep it the same, or at least not to have it lessened . Enhance is to augment or increase. But, we then are, according to the language in subsection one, to maintain or improve the environment of the state of Montana for future generations. If you

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have no qualifying adjectives to describe what the objective is, it seems to me that you're just uttering a few meaningless generalities. So, I support the amendment of Delegate James.

CHAIRMAN FELT: The delegate, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I think we are all searching for exactly the same thing. It's just a matter of what language to use. I would like to direct your attention to the fact that Delegate James' amendment deletes the language of the state. The majority felt very strongly that the environment of this state describes what we have in Montana. It is the clear, unpolluted air near Bob Marshall wilderness. It is the clear water and the clear air in the Bull mountains, and it is the stench in Missoula. But, that is the Montana environment. Delegate Campbell said there is no standard. There is a standard. It is the present environment of this state. You take out the words, of the state, and we take out what is our present environment and substitute clean and healthful, the majority felt this would permit degredation of the present Montana environment to a level as we find in Illinois, which may be clean and healthful. Our intention was to permit no degredation from the present environment of Montana and affirmatively require enhancement of what we have now.

CHAIRMAN FELT: The delegate, Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. It looks like one day was as long as I could stay seated. I

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wish to only point out two things. One, Delegate Anderson in his statement, used the words, quality environment in stating that he supported the majority position. I wish you to note that there is no such modifier in environment. Delegate McNeil used present environment, which is certainly not in the majority proposal. I submit that the arguments that are being used in support of the majority proposal are, in fact, not in that proposal. Thank you, Mr. Chairman.

CHAIRMAN FELT: Does the gentleman, Mr. James, wish to close? The delegate, Mr. Brazier.

DELEGATE BRAZIER: Before you vote on this, fellow delegates, I would call to your attention a couple of circumstances which I think you ought to be aware of. Although we all seem to know and be aware that we're drafting a constitution, I think we sometimes overlook the implications. The reason that the majority of your committee, in its wisdom, saw fit not to put qualifying adjectives in the constitution is that this provision is destined to be interpreted by the Montana supreme court. The supreme court is going to decide what this constitution means. If it decides wrong, if it decides something conservative that you don't like, it's locked in. You can't change the constitution. Whereas, with the qualifying adjectives in the legislation, which subsection three of the proposal contemplates, if the supreme court, in your opinion,abuses its discretion and makes a conservative interpreta-

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tion, it is subject to the checks and balances of being overruled by the legislature. If you lock it into this constitution, there's no chance to correct it. We've had one Constitutional Convention in eighty years modify the present constitution thirty-seven times in eighty years. I would point out, as you may have noticed in the discussions, that certain other statutes were called to our attention by Mrs. Robinson. All I would point out is that they are just that, statutes. They are subject to interpretation by the courts, and the courts are subject to the checks and balances of the legislative action of congress or of those states. Please bear that circumstance in mind during your deliberations. Thank you, Mr. Chairman.

CHAIRMAN FELT: The delegate, Mr. Cate.

DELEGATE CATE: Mr. Chairman and fellow delegates. The environment, of course, is one of the most important things facing us at this convention. Throughout the land, young people are asking us to do something about the environment because they're the ones that are going to have to live with it. Apparently, the public trust doctrine which was first advocated --

CHAIRMAN FELT: Mr. Cate, try to stay on these adjectives that we're debating.

DELEGATE CATE: -- has been rejected. Therefore, I feel it's imperative that we have a -- what we do adopt -- be

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as strong as possible. Speaking as a lawyer, I think that it adds something to section one to say, clean and healthful. I can envision going into court to prove that something is not healthful, but I can't envision going into court to prove, maintain and enhance the environment. I can prove that the sulphur that is being emitted from the steam plant in Billings, which there's an article on that in today's Gazette, is not healthful. I can prove that that's not clean in a court of law. But, I don't know how you could approach this thing otherwise if you don't have some type of adjective to hang a legal proceeding on. I know that those people who were on this committee are as concerned as I am to have an effective provision. I really feel that it is necessary to have these adjectives, clean and healthful, and I would support Mr. James' amendment. Thank you.

CHAIRMAN FELT: The delegate, Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I submit to the majority of the delegates here who are not lawyers, that when we nonlawyers have to make up our mind about language which is very crucial in terms of how it will be interpreted by the courts, we had better consult experts in whom we have confidence. I, therefore, asked Professor John McCrory, who teaches administrative law at the University of Montana Law School, for his opinion on the language of section one. I'd like to read you his response. He said, and I quote: Con-

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trary to the view of the committee majority, I believe that descriptive adjectives are necessary for guidance for interpreting the constitution, to insure that present problems are not perpetuated. The words, clean and healthful, have common usage and meaning which would furnish such guidance. Thank you.

CHAIRMAN FELT: The delegate, Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I would just like to say to Delegate McNeil that the people in Missoula are not satisfied with maintaining the present statute. In the past, they have had the benefit of being able to afford to buy property on your Flathead Lake and sit there free of pollution. This is rapidly changing. The pollution that they had in Missoula that they did not have in Polson, is slowly creeping into the Flathead valley as you well know. As you know in the Bob Marshall wilderness area, if you've flown in, there aren't many canyons left in this state that are not slowly filling up with the haze of industrial film. I think that clean and healthful is a minimum standard to put in. Mr. Brazier mentioned this would go before the supreme court. Certainly, I know it will regardless of the language we use. Certainly, the strongest language we could use in this provision is a clean and healthful environment. As I understand, Mr. McNeil, this was your original thought in the committee before you changed your mind on it. I would say that your first thought

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was the best thought and support Mr. James. Thank you.

CHAIRMAN FELT: We are going to have to switch tapes in a moment. I think we've had a pretty thorough discussion on these words. If someone has something new to add, let's get it down and do it in a minute or two, and then we can switch tapes.

The gentleman, Mr. Loendorf.

DELEGATE LOENDORF: I have no specific comments, but when I heard the statutes cited, I sent a page to get the book. I would just like to share with the convention what it says. It seems to go far beyond the majority proposal or Mr. James' amendment. It makes it the responsibility of the state of Montana to use all practical means to assure for all Montanans safe, healthful, productive and esthetically and culturally pleasing surroundings, attain the widest range of beneficial uses of the environment without degredation, risks to health or safety or other undesirable or unattendant consequences. The final paragraph states the legislative assembly recognizes that each person shall be entitled to a healthful environment and each person has a responsibility to contribute to the present enhancement of the environment.

CHAIRMAN FELT: Does the gentleman, Mr. James, wish to close?

The delegate Mr. McCarvel.

DELEGATE McCARVEL: I wonder if Mr. James would yield

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to a question.

CHAIRMAN FELT: Would the delegate, Mr. James, yield?

DELEGATE JAMES: I'll yield, Joe.

DELEGATE McCARVEL: Just how broad is this clean and healthful? What does it enhance?

DELEGATE JAMES: Well, I think I should let Mr. Loendorf answer you there, or I think he has answered you. I think perhaps my statement was not inclusive enough although I will settle for that if the delegates will. I think Jerry made a very good argument and I think Delegate Heliker's statement there -- McCrory took care of this very well.

DELEGATE McCARVEL: Thank you. Mr. Chairman.

CHAIRMAN FELT: Mr. McCarvel.

DELEGATE McCARVEL: Just before we convened this Constitutional Convention, there was an article in the Montana Standard which stated that a doctor had come up with his findings that smoking of cigarettes or cigars, was just as detrimental to those who enhaled the expended smoke, as the ones that smoked them themselves. So, I'm just wondering if I, as a nonsmoker, could take someone who is a smoker and charge him with polluting the environment under this clean and healthful air. That is all, Mr. Chairman.

CHAIRMAN FELT: The convention will stand at ease while we change tapes.

(Tape Changed)

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Please be in order. We are continuing the discussion of the amendment of Mr. James. The delegate Mr. Conover.

DELEGATE CONOVER: Mr. Chairman. Will Mr. James yield to a question?

CHAIRMAN FELT: Will the gentleman, Mr. James, yield to a question?

DELEGATE JAMES: I yield.

DELEGATE CONOVER: Mr. James, on this clear and healthful, I like the words real well but what concerns me is this zoning of the cities where they are spreading out into our rural areas and buying different plots, and then they get a hold there. If I have to be located pretty close and I have cattle, the first thing he does is sue me for the smell. Then, I'm in trouble, am I?

DELEGATE JAMES: I really don't know. I suppose if you had a feed lot in an area that was adjacent to a community and became so objectionable, I think perhaps some action could be taken. I think at present, we take action against public nuisances if such arise, and I'm sure they do.

DELEGATE CONOVER: Mr. Chairman.

CHAIRMAN FELT: Mr. Conover. Do you wish to speak?

DELEGATE CONOVER: Will Mr. James yield to another question?

CHAIRMAN FELT: Will you yield to another question?

DELEGATE JAMES: Yes, I will, Mr. Chairman.

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DELEGATE CONOVER: Mr. James. What I'm referring to is a lot of our city folks want to get away from a congested area, so they move out three or four miles, where we have been located -- us ranchers -- for you might say, generations. This is what's happening in some areas. I'm wondering what this clean air will do to our agriculture.

CHAIRMAN FELT: Does the gentleman, Mr. James, wish to respond to that question?

DELEGATE JAMES: Yes, I think that the courts will take these things into consideration. I don't think the courts have ever been unrealistic or, by their nature, should they be unjust. I think in all these things, we do try to consider balance when setting up these things. I, as one, wouldn't want to go overboard on environment nor would I want to go overboard the other way. But, I do think that it's time -- we know what has happened in other states from coast to coast, in other countries -- and I think we have to consider the future generations. We have to consider the people now, and we are doing that. Surely, you're aware that actions have been taken in many cases where there have been health hazards and pollution. I am sure that all the attorneys in the body, and anyone that has read the papers, know that actions have been taken. This is just a statement of principles, a guideline, and I agree with Mr. McNeil. We have a common cause here and it's just a matter of how we state it.

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Perhaps under the majority proposal here of the committee, you could ask Mr. McNeil the same question.

CHAIRMAN FELT: Does Mr. James feel he has closed?

DELEGATE JAMES: I was just trying to satisfy Mr. Conover. I didn't know I was closing.

CHAIRMAN FELT: No, I wasn't sure either, but I thought perhaps you had.

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, would Mr. Loendorf yield to a question, please?

CHAIRMAN FELT: Will Mr. Loendorf yield?

DELEGATE LOENDORF: Yes.

DELEGATE ROD HANSON: Jerry, the language you read from the statute is the present statute, as I understand it. How long has that been on the books?

DELEGATE LOENDORF: Since 1971.

DELEGATE ROD HANSON: Has that been interpreted by the courts?

DELEGATE LOENDORF: No, it has not.

DELEGATE ROD HANSON: In your opinion, is that language stronger than either of what is being proposed here by the majority or the minority?

DELEGATE LOENDORF: It appears to be to me. I just pointed this out. I'm not an expert in this area and I was not on this committee, but they seem to use the same words

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that are being proposed by Mr. James plus many others. When you say stronger, it seems to me it's more defining anyway.

DELEGATE ROD HANSON: Mr. Chairman.

CHAIRMAN FELT: Mr. Hanson.

DELEGATE ROD HANSON: Would Mr. McNeil yield to a question please?

CHAIRMAN FELT: Will Mr. McNeil yield?

DELEGATE McNEIL: I yield.

DELEGATE ROD HANSON: Mr. McNeil. No doubt your committee looked at this during your deliberations. What is your opinion of the statute we have now as compared to the wording in the constitution?

DELEGATE McNEIL: I have no opinion on the statute, Mr. Hanson. The opinion of the majority is that maintaining and enhancing the environment of this state is the strongest constitutional statement we can make.

CHAIRMAN FELT: The gentleman, Mr. James. Do you wish to close?

DELEGATE JAMES: If there are no other speakers, I think I've said my piece. Everyone knows how I feel. It's a matter not of objective here, because I'm sure that we all have the same objective, the same concern, the same love of our state, and I think we want to do right by our state. So, it's just a matter of wording. If you feel that my adjectives will help in some measure to make this law stronger, then adopt

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them. If you feel that Mr. McNeil's in the majority proposal there is the best thing, adopt it. What we're looking for is what's best for our state. Thank you.

CHAIRMAN FELT: The question now arises on the --

DELEGATE HARLOW: Could we have a roll call vote? (Seconds rise)

CHAIRMAN FELT: A roll call vote is asked for. There are sufficient seconds. The question now arises on the motion to amend subsection one of section one. I believe you all know the words that are in the amendment. For what purpose does the gentleman, Mr. McNeil, rise?

DELEGATE McNEIL: Mr. Chairman, I rise to ask for one minute to explain my vote. I want the record to clearly reflect that I am not voting against Mr. James' amendment, but rather voting for what I believe to be the stronger statement. I believe the entire delegation will agree that whichever we adopt, it is the intention of this convention to adopt the stronger of the two. Thank you.

CHAIRMAN FELT: It's the Chair's understanding that the rules are that any member may explain his vote, unless some member objects. The purpose of the rule, I think, is to prevent everyone from explaining their vote in case they have already talked on the motion. For what purpose does the delegate, Mrs. Bugbee, rise?

DELEGATE BUGBEE: I rise to explain my vote. I think,

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unquestionably, that the amendment of Mr. James is the stronger environmental article. That's why I'm voting for it.

CHAIRMAN FELT: For what purpose does the gentleman, Mr. Brazier, rise?

DELEGATE BRAZIER: I feel that although the language of Mr. James' amendment is stronger, it properly belongs in the legislature. There's going to come a time when there's a big case against a big industry. They're going to bring in some doctors from Pittsburgh to testify that it's a healthy environment back there, and our supreme court is going to set us back instead of forward. In other words, we'll make more progress by leaving it out.

CHAIRMAN FELT: For what purpose does the gentleman, Mr. Berg, rise?

DELEGATE BERG: I rise to explain my vote.

DELEGATE ??: I object.

CHAIRMAN FELT: An objection has been made. The question now arises on the -- Did you hear an objection, Mr. Berg?

DELEGATE BERG: Yes, I did.

CHAIRMAN FELT: I thought I did. The question now arises on the motion to amend. All those in favor will vote Aye; opposed will vote No. Has every delegate voted? Does any delegate wish to change his vote? If not, the clerk will record the vote.

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1	Aasheim	-	Abs	Choate	-	Aye
2	Anderson, J.	-	Nay	Conover	-	Nay
3	Anderson, O.	-	Nay	Cross	-	Aye
4	Arbanas	-	Abs	Dahood	-	Nay
5	Arness	-	Abs	Davis	-	Abs
6	Aronow	-	Nay	Delaney	-	Nay
7	Artz	-	Abs	Driscoll	-	Nay
8	Ask	-	Aye	Drum	-	Nay
9	Babcock	-	Nay	Eck	-	Aye
10	Barnard	-	Abs	Erdmann	-	Abs
11	Bates	-	Abs	Eskildsen	-	Abs
12	Belcher	-	Nay	Etchart	-	Nay
13	Berg	-	Nay	Felt	-	Nay
14	Berthelson	-	Nay	Foster	-	Aye
15	Blaylock	-	Aye	Furlong	-	Aye
16	Blend	-	Nay	Garlington	-	Nay
17	Bowman	-	Aye	Graybill	-	Abs
18	Brazier	-	Nay	Gysler	-	Nay
19	Brown	-	Aye	Habedank	-	Nay
20	Bugbee	-	Aye	Hanson, R. S.	-	Nay
21	Burkhardt	-	Aye	Hanson, R.	-	Nay
22	Cain	-	Aye	Harbaugh	-	Abs
23	Campbell	-	Aye	Harlow	-	Aye
24	Cate	-	Aye	Harper	-	Aye
25	Champoux	-	Aye	Harrington	-	Aye

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1	Heliker	-	Aye	Rebal	-	Nay
2	Holland	-	Abs	Reichert	-	Aye
3	Jacobsen	-	Aye	Robinson	-	Aye
4	James	-	Aye	Roeder	-	Aye
5	Johnson	-	Nay	Rollins	-	Aye
6	Joyce	-	Abs	Romney	-	Aye
7	Kamhoot	-	Nay	Rygg	-	Nay
8	Kelleher	-	Abs	Scanlin	-	Nay
9	Leuthold	-	Nay	Schiltz	-	Aye
10	Loendorf	-	Aye	Siderius	-	Aye
11	Lorello	-	Nay	Simon	-	Nay
12	Mahoney	-	Abs	Skari	-	Aye
13	Mansfield	-	Nay	Sparks	-	Nay
14	Martin	-	Nay	Speer	-	Aye
15	McCarvel	-	Nay	Studer	-	Nay
16	McDonough	-	Aye	Sullivan	-	Nay
17	McKeon	-	Aye	Swanberg	-	Nay
18	McNeil	-	Nay	Toole	-	Abs
19	Melvin	-	Aye	Van Buskirk	-	Aye
20	Monroe	-	Aye	Vermillion	-	Aye
21	Murray	-	Nay	Wagner	-	Aye
22	Noble	-	Nay	Ward	-	Nay
23	Nutting	-	Nay	Warden	-	Nay
24	Payne	-	Aye	Wilson	-	Nay
25	Pemberton	-	Nay	Woodmansey	-	Aye

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CLERK SMITH: Mr. President, forty voting Aye, forty four voting No.

CHAIRMAN FELT: The motion is lost. There was, as I said, another motion presented. If the member who presented it would make himself known, we'd hear it. If he does not, we'll presume it's withdrawn. The question then arises on the motion to adopt subsection one of section one. All those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. A division has been called for. The gentleman, Mr. Brazier, for what purpose do you rise?

DELEGATE BRAZIER: Mr. Chairman. I had submitted to the clerk this morning a proposed amendment to subsection one. Apparently, it didn't come to your attention.

CHAIRMAN FELT: I called for your identify two or three times. It must have been you. If you wish that acted upon -- Is that the one that inserts the word, physical?

DELEGATE BRAZIER: I do, your Honor.

CHAIRMAN FELT: All right. Without objection, we will eliminate the action of attempting to vote for which a division has been called. We are back at a point at which further amendments may be offered to subsection one of section

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one. Hearing no objection, the clerk will read the amendment.

CLERK SMITH: (Reading) Mr. Chairman. I move to amend section one, subsection one, page three, line ten of the Natural Resources and Agriculture Committee majority proposal by inserting after the word, the, and before the word, environment, the word, physical. Signed, Brazier.

CHAIRMAN FELT: The gentleman, Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman and fellow delegates. This is nothing sinister. It's simply a housecleaning, housekeeping type amendment. It arises at this time, because in the rush of business toward the deadline for preparing committee reports, we didn't get the communication from some people that deal in the environmental areas. Since that time, it has been called to my attention that there are, in various fields of study and administration, a number of usages of the term environment, including such things as physical environment, cultural environment, economic environment, political environment, etc. This has been borne out. I've seen some provisions in other statutes which use the word physical environment. I merely suggest it to make sure that anybody in the future knows what we're talking about here, and that is physical environment. It is in no way limiting and in no way intended to detract from the strength of the provision. I just consider it good draftsmanship and a means of clarifying what this constitution intends.

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CHAIRMAN FELT: The gentleman, Mr. Cate.

DELEGATE CATE: Mr. Chairman. I move as a substitute amendment to strike section one --

CHAIRMAN FELT: Mr. Cate, don't use the word substitute amendment. Either make a substitute motion or amend his motion, but if you're amending, it better relate to his motion.

DELEGATE CATE: I'll make a motion to amend section one of the Environmental and Natural Resources Committee by striking therefrom on line eight, page three --

CHAIRMAN FELT: Move slowly now.

DELEGATE CATE: -- after the words, section one period, the following language, protection and enhancement period through line nine, through line ten, through line eleven. In other words, strike out the entire provision except the words, section one, and insert in its place the following language: The state of Montana shall maintain and enhance a clean and healthful environment as a public trust period. The sole beneficiary of the trust shall be the citizens of Montana, who shall have the duty to maintain and enhance the trust comma, and the right to protect and enforce it by appropriate legal proceedings against the trustee. I'll read that again.

CHAIRMAN FELT: Mr. Cate, before you do, we'll certainly permit you to offer it, if you're sure you wish to offer it as an amendment to subsection one.

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DELEGATE CATE: I do.

CHAIRMAN FELT: Do you have it in writing?

DELEGATE CATE: I do.

CHAIRMAN FELT: Why don't you -- Has it been brought forward?

DELEGATE CATE: It has not.

CHAIRMAN FELT: Why don't you do that and would you be agreeable if we do recognize you at the moment, to make this a substitute motion and proceed to deal with the less far-reaching matter and --

DELEGATE CATE: Yes, Mr. Chairman.

CHAIRMAN FELT: -- perhaps it'll be disposed of. If we find, however, that this other one takes a great deal of time, we'll recognize Mr. Cate because, of course, if his motion did prevail, the other one would be wiped out completely. Does anyone wish to discuss further the insertion of the word, physical, as proposed by Mr. Brazier? The delegate, Mrs. Cross.

DELEGATE CROSS: Would Mr. Brazier yield to a question, please?

DELEGATE BRAZIER: I yield.

CHAIRMAN FELT: The gentleman yields.

DELEGATE CROSS: A few minutes ago, Jeff, we had questions about the use of qualifying language. You now propose to use the word, physical. Doesn't that fall into the

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same category as the other qualifying language?

DELEGATE BRAZIER: I don't believe so, because I don't think it's subject to interpretation. This is merely limiting to the subject matter we're talking about, which is our physical environment. I don't want to leave the door open for somebody to go tearing off into our economic environment or some other place under this little wedge that they might use.

CHAIRMAN FELT: The gentleman, Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, may I ask Delegate Brazier a question?

CHAIRMAN FELT: Does Mr. Brazier yield to a question?

DELEGATE BRAZIER: I yield.

DELEGATE ROMNEY: Jeff, would you define physical as you envision it in this case? Natural, artificial -- just what do you envision in the definition of physical as you use it here?

DELEGATE BRAZIER: Well, for the most part, it's anything that can be communicated with or identified by our six physical senses. What we breathe, what we touch, what we see.

CHAIRMAN FELT: Is there any further discussion on the amendment?

The delegate, Mr. Heliker.

DELEGATE HELIKER: Would Delegate Brazier yield?

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CHAIRMAN FELT: Do you yield?

DELEGATE BRAZIER: Yes.

CHAIRMAN FELT: The gentleman yields.

DELEGATE HELIKER: In your opinion, Mr. Brazier, what is excluded by the term physical?

DELEGATE BRAZIER: It ventures into other areas of government, such as politics. We're here to improve our political environment anyhow, but this has just been called to my attention, Professor Heliker, by people who deal in the area. They said they've met with confusion, and people that they've met with have tried to expand their interests and their administration beyond the physical environment which everybody understands to be what we're after here. I think it's a better practice to make certain that we don't permit that.

CHAIRMAN FELT: Does the gentleman, Mr. Heliker, wish to speak on the motion to amend?

DELEGATE HELIKER: I'd like to ask Mr. Brazier another question.

CHAIRMAN FELT: Will you yield to another question?

DELEGATE BRAZIER: Yes.

DELEGATE HELIKER: You've mentioned specifically, I believe, politics. I couldn't quite hear because you didn't have your mike up close to your mouth.

CHAIRMAN FELT: Could you restate the other matters, Mr. Brazier?

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DELEGATE BRAZIER: All I can do is give you some examples that have been called to my attention. I don't claim to be an expert in these other fields myself, but there is a usage of the term political environment, social environment, economic environment, etc. I just want to make certain that nobody makes an excursion into those areas as a result of what we draft on our environmental article here today.

CHAIRMAN FELT: The gentleman, Mr. Heliker.

DELEGATE HELIKER: May I continue my question?

CHAIRMAN FELT: If you wish to use questions, go ahead.

DELEGATE HELIKER: Well, I would ask if you couldn't be a little bit more specific in listing examples of these things. If you say social, economic, cultural environment, I'd like to know exactly what you have in mind.

DELEGATE BRAZIER: Anything that is not clearly identifiable or subject to catagorization under physical environment. I mean to exclude everything else.

DELEGATE HELIKER: All right.

CHAIRMAN FELT: The gentleman, Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman. As I'm listening to the discussion, it seems that a member of the committee -- maybe you weren't on that committee. Were you on that committee, Jeff? -- A member of the committee has somewhat weakened the position of the committee in their statement about

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not needing any qualifying words at all. I'm thinking maybe, at some point, we'll want to amend other language on this article in order to make it the strongest it can be. Thank you.

CHAIRMAN FELT: If there's no further discussion -- The gentleman, Mr. Harlow.

DELEGATE HARLOW: I am slightly bewildered by this word physical, too, whether it applies to environment. If we read the thing as the majority has maintained, that it's so elegant in its wording, that we're going to maintain a physical environment. All right, if we're going to maintain the physical stench in Missoula, if we're going to maintain the blemished and eroded hillsides in western Montana as well as eastern Montana, if we're going to maintain the erupted and corrupted land in eastern Montana as they dig up the coal -- I think this word is a bad word. I think we should delete it and maintain the idea that somebody said was good and not put any extra words in here. Let's not go back on what we just said was all right.

CHAIRMAN FELT: The gentleman, Mr. Romney.

DELEGATE ROMNEY: I wish to speak briefly against the amendment offered by Delegate Brazier. I think that the use of environment rather than qualifying physical environment, is better if we're going to choose. If we have physical environment in there, it may, according to my understanding of

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Delegate Brazier's reply, mean that cultural environment and political environment and one thing or another of that character, are not included in his purview. I maintain that there are ramifications to environment that are not physical that are concerned in the matter before us. These ramifications include political environment. They include cultural environment. If I smell the stench of the Waldorf-Hoerner mill in Missoula forty-seven miles away in Hamilton, under proper atmospheric conditions, that is a cultural environment which I am affected with, and adversely so in my opinion. Of course, I realize that we must try to reach a happy medium here so that -- and I think all of us have this intention. I realize that if you kill the cow, you can't have any milk, and I don't think any of us wish to do that. I think we should not accept this word physical. Another reason is if we can't understand what physical is here, how is the supreme court, when it hears a case involving it at some time in the future, going to be able to determine what we meant.

CHAIRMAN FELT: Members of the Committee, the question now arises on the motion to amend offered by Mr. Brazier. All those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Noes have it.

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The gentleman, Mr. Cate.

DELEGATE CATE: Mr. Chairman. At this time, I would move to amend section one by inserting the language which the clerk now has and which I now ask to be read.

CHAIRMAN FELT: Will the clerk please read the proposed amendment?

CLERK HANSON: (Reading) Mr. Chairman. I move to amend section one, subsection one, by striking it in its entirety and inserting the following: Section one, subsection one: The state of Montana shall maintain and enhance a clean and healthful environment as a public trust. The sole beneficiary of the trust shall be the citizens of Montana who shall have the duty to maintain and enhance the trust and the right to protect and enforce it by appropriate legal proceedings against the trustee. Signed, Cate.

DELEGATE CATE: Mr. Chairman.

CHAIRMAN FELT: The gentleman, Mr. Cate.

DELEGATE CATE: This is a modified public trust concept that I would like to ask you to consider at this time. From the language, you will note that it states that the state of Montana has the duty to maintain a clean and healthful environment, but it makes it a public trust. In other words, it makes it the duty of the state as a trust -- the state acting as a trustee to enhance the environment. This has the effect of giving beneficiaries the right to enforce the trust. The

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next sentence says that the sole beneficiary of the trust shall be the citizens of Montana. In other words, you would have to be a citizen of Montana in order to enforce the trust. This would take care of the comment that I've heard about hippies passing through Montana that might try and sue everybody. The rest of the paragraph says who shall have the duty to maintain and enhance the trust, which is not very different from the present language, and the right to protect and enforce it by appropriate legal proceedings against the trustee. This would give the citizen the right to sue the state to enforce the trust, not private individuals. In other words, if pollution such as is occurring in Billings killing the life on the south rims, was occurring, a citizen would have the right not to sue the power company, but it would have the right to sue the state agency, the board of health, to require that they take appropriate action to protect the environment and make it clean and healthful. It takes away the argument against the public trust concept that private citizens will be harassing private individuals. Everybody here seems to agree that we need a strong environmental provision, and I think that this is the most effective and the strongest environmental provision that we could put in our constitution at this time considering the stage of enlightenment of some of the citizens of Montana. The public trust doctrine is nothing new. The public trust doctrine has been recognized by the

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United States Supreme Courts since 1842. The public trust doctrine has been in our constitution for eighty-three years. All the state lands are in public trust. Navigable streams are in public trust. The air is in public trust. The shore lands are in public trust. It has existed in England for eight hundred years. The public trust is not a new concept. It is not consistent to taking private property as has been alleged. It is not a socialistic system which has been alleged. It's simply an effective means of protecting the environment and is probably the only true and effective means of protecting the environment. Thank you.

CHAIRMAN FELT: The gentleman, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I rise to be against Mr. Cate's proposed amendment and in doing so, first I would like to read you a couple of paragraphs from a letter sent to Delegate Cate by George Darrell, which I had printed and spread upon your desks on approximately February 18th, I believe. In attempting to apply these fundamental concepts of ecological understanding to a draft of an environmental article, we devised (and this was Mr. Darrell and Mr. Cate, I presume) an unorthodox concept of the public trust. I am now convinced that the prevailing, narrowly legalistic construction of public trust -- in quotes -- in conventional past usage has effectively usurped the opportunity to employ the public trust concept in this different, innovative sense.

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Since conventional usage of the public trust concept has applied only to circumstances of public ownership, a different application in a new context may be subject to valid doubt as to its unintended implications to the private ownership of land. In the prevailing legal usage then, the application of the public trust concept to achieve protection for the environment does, inadvertently,impinge upon the equally valid need to protect and reaffirm private property rights. This was not intended, and he goes on to say that the overwhelming majority of private property owners -- probably ninety-nine percent plus -- are offended against, by the environmental consequences, of the actions, and that private property rights must be protected. I really cannot see anything good coming from this proposed amendment, and I can see an awful lot of things that could be very bad. So, I request that when the vote comes on this, that we vote against it.

CHAIRMAN FELT: The gentleman, Mr. Foster.

DELEGATE FOSTER: Thank you, Mr. Chairman. Would Mr. Gysler yield to a question?

CHAIRMAN FELT: Will the gentleman, Mr. Gysler, yield to a question?

DELEGATE GYSLER: Yes.

DELEGATE FOSTER: Mr. Gysler, do you consider the article on water to be a public trust of water?

DELEGATE GYSLER: Mr. Foster. Perhaps it could be

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determined that that is a public trust of water. The implications between private land and water are considerably different. Anytime you use the words, public trust -- I would like anyone who would like to argue the definition of a trust to go and talk to somebody in a bank, or an attorney, or somebody like that who knows the meaning of the word trust.

DELEGATE FOSTER: Thank you, Mr. Gysler. Mr. Chairman.

CHAIRMAN FELT: Mr. Foster.

DELEGATE FOSTER: I would quote from the committee report: All surface, underground, flood and atmospheric waters within the boundaries of the state of Montana are declared to be the property of the state. Now, my point in bringing this up, is actually we've proposed something in this same article which goes beyond the concept of public trust and have, in fact, declared it to be state property. There's a great deal of concern about the concept of public trust, but I feel that it should be understood that when you say the environment, you're not stating the private property rights; you're not stating the water rights; you're not stating any of the things that we own, the buildings, etc. It's strictly related to the environmental system. The concern about the public trust in this area, I think, is unwarranted when, in fact, we realize the need for protecting water carefully. I support the majority's proposal on water.

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When we realize the need of really protecting something, we come to the concept of public trust. The real question before this convention is whether we really believe in the concept of protecting the environment or not. If we really want to protect the environment significantly, then we must subscribe to the concept that the public good, public benefit, public trust -- whatever you want to use for those words -- must be incorporated in order to protect the environment. If we really don't want to protect the environment all that much, fine, well and good. But, I think if we really want to protect the environment, honestly and totally, then the only way we can do it is subscribe to a system which will allow us to protect it. I suggest that the public trust, as proposed by Delegate Cate, which requires a person to be a citizen, is the only way to really protect the environment. Let's not kid ourselves about whether we really want to protect the environment or not. If we really want to protect the environment, this is the only way to really do it effectively. If we don't, fine and good. Thank you, Mr. Chairman.

CHAIRMAN FELT: The gentleman, Mr. Rebal.

DELEGATE REBAL: Mr. Chairman, would Mr. Foster yield to a question, please?

CHAIRMAN FELT: Will the gentleman yield?

DELEGATE FOSTER: Gladly, Mr. Chairman.

DELEGATE REBAL: Mr. Foster. Is your interpretation

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of a public trust mean that a land owner will turn his private property over to the state, to be held by the state of Montana, for the public?

DELEGATE FOSTER: Absolutely not, Mr. Rebal.

CHAIRMAN FELT: The gentleman, Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. We do not have this amendment, I believe, before us in writing.

CHAIRMAN FELT: Would you like it read again?

DELEGATE HARBAUGH: Would it be possible to read it slowly enough so that we could get it down?

CHAIRMAN FELT: It deletes the entire section, including the words in capital letters. Then, subsection one: The state of Montana shall maintain and enhance a clean and healthful environment as a public trust period. The sole beneficiary of the trust shall be the citizens of Montana comma, who shall have the duty to maintain and enhance the trust comma, and the right to protect and enforce it by appropriate legal proceedings against the trustee period. Anyone wish it read again? Mr. Harbaugh, do you wish to speak? Does the gentleman, Mr. Cate, wish to close? The gentleman, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I didn't think we were approaching the closing stage. I would like to make a few comments which the majority of the committee thoroughly considered.

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CHAIRMAN FELT: These will be on the matter of the public trust doctrine?

DELEGATE McNEIL: Yes, Mr. Chairman. The committee had before it two written proposals, one submitted by Delegate Cate, number twelve, and one submitted by our chairman, Delegate Cross, number one sixty-two. Both had language comparable to this expressed provision. The state of Montana shall maintain a clean and healthful environment,--the word environment must include land as well as air, water, everything else -- as a public trust for the benefit of all citizens. The intent is clear to protect the environment. No one is questioning that. The expressed language speaks for itself. The state shall hold all land, in trust, for the benefit of all citizens. This is a departure from our traditional notions of private property. It goes beyond the air, the sea, the navigable waters,and strikes right to the heart of private property ownership. I would like to refresh the memory of those delegates who attended the presentation by Mr. Charles Lindberg. He was brought to this convention at the request of some of the delegates. At the evening, informal session in the governor's room, he expressed his concern for maximum personal freedom with government regulation, and I emphasize the word regulation, of all property, including private property. At that public meeting, several advocates of the public trust theory asked Mr. Lindberg several questions,

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trying to get him to say in his answer, public trust, the magic language, is the solution. He carefully avoided recommending that doctrine. After the meeting, and alone, for about fifteen minutes with Mr. Lindberg, I showed him the expressed language of both delegate proposals twelve and one sixty-two. The following morning when he addressed this convention as a whole, he used the same language recommending maximum personal freedom. However, he changed the word government regulation and said, with government monitoring. I submit that there is a distinct difference. The majority proposal before you now does recommend, as did Mr. Lindberg, government monitoring. It goes further than that and directs the legislature to provide remedies to prevent degredation. This is anticipatory. I submit that the only difference, and refer you to the express language of this proposal, the state of Montana shall hold the environment, including land, as a public trust for the benefit of all the citizens. I submit that this is a substantial change in our body of law and I urge you to vote against it. Thank you.

CHAIRMAN FELT: I would like to ask Mr. Cate a little question for clarification. Did you intend to delete subsections one, two and three entirely?

DELEGATE CATE: Yes. Mr. Chairman, I believe that this one section, as proposed, will take care of the entire environmental situation.

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CHAIRMAN FELT: All right. The language before us didn't make it entirely clear, but it's clear enough now.

The delegate, Mr. Arbanas.

DELEGATE ARBANAS: Mr. President and fellow delegates. Very often the words that you use about something are filled with emotion. We've got two very emotional words here in private property and public trust. Mr. McNeil said it strikes right at the heart of the issue because these are opposed to each other. I submit, of course, that this is the way it would appear. Maybe we're using the wrong words. It seems to me that there are other words that get to the heart of the matter better than either of these two. I'd rather use something like common stewardship or shared responsibility. I don't think anyone would say that the right to private property is unlimited and that there is not a shared responsibility or a joint responsibility living on this earth with other people that I have to worry about. The second item that I'd like to talk about, and it's sort of a rebuttal to Mr. McNeil, if I could. He talked about the two words, government regulation and government monitoring. This is very fine and I hope to support that in the proposal, but it leaves out the problem of how do I, as an average citizen, get at that? I think that the proposal before us guarantees that I can get at it.

CHAIRMAN FELT: The delegate, Mr. Johnson.

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DELEGATE JOHNSON: Mr. Chairman, ladies and gentlemen of the delegation. I rise in opposition to Mr. Cate's proposal. I think that if you want socialism to step in the door, just vote for what he proposes.

CHAIRMAN FELT: The gentleman, Mr. Anderson.

DELEGATE JOHN ANDERSON: Mr. Chairman, fellow delegates. I rise in opposition, definitely, to Mr. Cate's proposal. It has often been said that a little bit of knowledge on any subject can be a dangerous thing. I am sure that Mr. Cate's proposal is that very thing. It is a dangerous thing. It is setting our very life support system, including private property, in the hands of the state as a trustee. I do not think that this is what we want. In pertaining to private property, I think Mr. George Darrell has finally come to the conclusion that setting property up as a private trust does impinge and encroach upon the private property rights of the individual. I submit to you, in my opinion, that it does infringe and encroach upon the property rights as in section five of our federal constitution, and also infringes upon our civil rights as set forth in section fourteen of our federal constitution. I urge the delegates to vote against Mr. Cate's proposal.

CHAIRMAN FELT: The delegate, Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, will Mr. Johnson yield to a question?

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CHAIRMAN FELT: Will Mr. Johnson yield to a question?

DELEGATE JOHNSON: I yield.

DELEGATE SIDERIUS: Will you define socialism?

CHAIRMAN FELT: We will permit this, but in debate. Let's refrain from anything that encroaches upon anybody's personal privileges. That applies to you, too, Mr. Johnson. You go ahead and define socialism, if you wish to.

DELEGATE JOHNSON: I think enough of a definition would be censure of government and control of all private industry, etc., and everything that would contain your personal integrity -- control of the private person. I just don't like central government, that's all there is to it.

CHAIRMAN FELT: Let's keep our remarks on the merits of the question.

The gentleman, Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I am one who happens to believe that all of the people who are talking about our environment being in trouble, are absolutely correct. I do not believe that we are in a time when business as usual will get the job done. I do not subscribe to the theory that everything is going along just fine and if we do not change any present laws, or present attitudes or present actions, that everything is going to turn out all right. No environmentalist who knows anything about what's going on in the world today, is subscribing to this theory anymore. I

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submit to you that every intelligent citizen is alarmed, and duly alarmed, at what is happening to the environmental life system in this world today. Now then, I'm concerned that somewhere in here, however we do it -- It might just be that this is the place to take the stand on Mr. Cate's proposal -- that the people be given a chance to join in this battle. I do not see the constitution as a place where we parcel out partial rights to the people, but it's the peoples' document for parcelling out duties to agencies which will work in their behalf. The citizen is capable of fighting his own battles, if he's given the tools. We don't need bureaucractic middlemen and when the citizen understands he has direct stakes in the outcome, he always fights best. Now, private and class actions by citizens, only help those agencies of government which are trying to protect and enhance the environment of our country. Let me use an illustration. Citizens' suits complement the enforcement power of government agencies in the fields of antitrust and security frauds, for example. We have good examples of how this complementary action works. In both of these areas, congress and the courts have relied on private suits to aid enforcement. The department of justice and the securities exchange commission are understaffed and unable to bring all the suits necessary for enforcing regulatory laws. The enforcement of antipollution laws will benefit in the same manner, if private citizen action is

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allowed. This fight for life -- I want to use that word again. This fight for life, literally, is our fight. We must have the equipment to wage the battle as people. Now, what about use of suits, overturning private property rights, etc.? Won't court dockets be crowded with environmental suits? Well, in practice, this hasn't occurred in other states which allow such suits and, of course, the courts will decide what is nuisance in a suit. Your suit against my pollution of your well may be a nuisance to me, but a vital matter to you as you drink your water. Now, Connecticut has a statute of public trust and they're having no trouble with so-called nuisance suits. The Connecticut deputy attorney general writes that the safeguards as provided by bonding, by high costs of litigation, plus the redress a defendant has from a wrongful suit, are adequate. I'm sure all these protections will be written into the Montana law. The Constitutional Convention secretary in North Dakota wrote in a similar fashion, echoing the same opinion as those expressed by Connecticut. So, the word of experience comes fron New York, Minnesota, Washington, Florida, Indiana, Michigan, Illinois -- all of which recently wrote good constitutional provisions allowing for adequate legal proceedings. All of these states have preceded Montana in allowing their citizens to join in their own battle for a clean and healthful environment for their children. Not a one of these states has more to protect

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than the treasure of the treasure state. I submit to you that here, or somewhere, this convention needs to take a stand to make sure the people have some teeth in an environmental law.

CHAIRMAN FELT: I intend to recognize at least one person who might be in opposition to Mr. Cate's motion and certainly will permit him to close. If more feel it's necessary to speak, that's all right.

The gentleman, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I would like to pose one question to Delegate Harper.

CHAIRMAN FELT: Does the gentleman, Mr. Harper, yield?

DELEGATE HARPER: Yes, I will.

DELEGATE KAMHOOT: Delegate Harper, did you say that Michigan had a public trust concept?

DELEGATE HARPER: It is statutory, yes.

DELEGATE KAMHOOT: Thank you. Mr. Chairman.

CHAIRMAN FELT: Mr. Kamhoot.

DELEGATE KAMHOOT: I have an editorial here from the state of Michigan from a newspaper. If the delegates would just bear with me for just a little bit, I'll be as brief as I can. I've deleted a good deal of it, but I think that we should give a lot of thought to this -- how far it can go when your government is going to come in and, mandatorily, tell people what they can do. Here's the editorial

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from the state of Michigan. The state water resources commission has ordered Lampair City and the townships of Elba and Mayfield to build their regional sewer project, which will cost around fourteen million dollars. They are polluting the Flint River and must stop, the WRC says. Also, the WRC says, by making it a regional project, three communities become eligible for hugh gobs of state and federal aid, all of which sounds just dandy. These days the ecology ranks right up with apple pie. Not even the worst villain will defend pollution, and not even the most conservative communities refuse the money from Washington and Lansing. But, is that federal and state money really available? It petered out this year and there's absolutely no guarantees if it will materialize next year, or any other year. In the meantime, the two townships and the city face, in 1973, construction deadline without the slightest assurance of how they could ever pay for such a project. What are their alternatives? Could the pollution be cured on an individual basis, community by community, or even polluter by polluter? Just who are the polluters? What power does the state have to enforce its order? What happens to communities who don't comply? Is the township board arrested? There are many interesting and unanswered questions. We do not raise them lightly. We raise them, in fact, on the prompting of Eugene Black who is a justice of the Michigan State Supreme Court. He is also a

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former attorney general of Michigan. It is with great interest that we read a letter from Justice Black published in the February 7th Port Huron Times Herald. He objected to the high-handed way the WRC is giving orders, and he objected to the meek way his township was falling in line. Here are a few quotes from Justice Black's letter. Justice Black. The only propered excuse for WRC's dictatorial crowding of the township board is that there will be no state or federal aid for the proposed quandarimania unless the township joins in such a regional plan. For the present, I confine to one fact, my objections to WRC's threatened imposition on the townships. It is that the township board seems to think that its taxpayers are absolutely defenseless and have no choice but that of surrender to another Lansing bureau -- a bureau that cares less than a tinker's damn about the deplorable consequences of confiscatory taxation. In a word, the board hasn't even bothered to obtain the advice of its attorney as regards the specific cost to the taxpayers, of the proposed regional project. The legal alternatives that are available to the township by identify of the places in the township of the alleged pollution, the cost of proper correction of the latter's, specifically within the township project, the actual, if any, extent on availability of state and federal aid. The constitutional validity of WRC's imposition on the township of its will. The Board simply doesn't seem to realize that eligibility

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of state or federal aid never guarantees any such aid. Once the township signs the big mortgage, the taxpayers must pay whether aid comes through or not. Justice Black said he was writing as a taxpayer only, but there's no question that the residents felt the weight of his position and experience behind his words. The day after the letter was published, the Port Huron Township Board voted to ignore the WRC's recent order and to correct the pollution itself. Previously, the WRC had declared that this would be totally unacceptable to the state. They may be dictators, but I'm not afraid of the WRC. People have taken up arms for less, said the township treasurer. Now, the state of Michigan has been held up to us many times in the committee. This has been quoted dozens of times, how well it works. Only thirty-five lawsuits have been instigated so that proves that it's real good. Here's an editorial right out of one of the Michigan papers. Here's a statement by a supreme court justice speaking as a taxpayer. I submit to you delegates, that you better give this public trust concept a big, long look before we adopt it in Montana, because it is not necessary in this state. Thank you, Mr. Chairman.

CHAIRMAN FELT: The gentleman, Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, would Mr. Cate yield to a question?

CHAIRMAN FELT: Will Mr. Cate yield to a question?

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DELEGATE CATE: I certainly would.

DELEGATE VERMILLION: Mr. Cate, as you know, there's a good deal of concern when you hear the words public trust. There's going to be a good many frivolous suits used on it, and I wonder if you could expand on this business of frivolous suits under your proposal?

CHAIRMAN FELT: Would the gentleman, Mr. Cate, be able to do that in closing, do you think?

DELEGATE CATE: I could do it in my closing, I suppose.

CHAIRMAN FELT: The gentleman, Mr. Scanlin. Do you wish to be recognized?

DELEGATE SCANLIN: Mr. Chairman. In the words of Delegate Mahoney, who is absent today, I'm worried about our environment. The tremendous steps that the last session of the Montana legislature took to fact these problems, renewed my confidence in what a legislature can do. I rise in objection to this amendment.

CHAIRMAN FELT: The gentleman, Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. It's odd that one hundred years ago today, there was a small handfull of people in Helena who were celebrating what perhaps has been one of the greatest things that could happen to the west. On that date, on March 1st, 1872, one hundred years ago, President Grant signed the measure establishing Yellowstone Park and

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dedicated and set apart, as a public park or pleasure ground, for the benefit and enjoyment of the people, and for the preservation from injury or spoilation of all timber, mineral deposits, natural curiosities or wonders, and their retention in their natural condition. It was a little band of Helena people, and Montana residents, that wanted to see whether the stories and the tall tales that were told by the Indians and Jim Bridger, were a reality that led to the trip of this small band of people from Helena in 1872 to see the Yellowstone National Park country. As they went there, they went with an idea that they were going to divide it up and take on concessions of their own and preserve it. But, at the fireside on the last night that they were in the park, they came to the conclusion that it would be a crime if this were not to be set aside for the benefit and enjoyment of the people. They initiated this effort, and the result has been something which has not only spread throughout the United States, but has also spread throughout the world, and that has been the development of the national park idea.

CHAIRMAN FELT: Mr. Martin, we're very close to twelve, so please complete the dedication of the park.

DELEGATE MARTIN: I think, Mr. Chairman, that this is important enough so that I should be given a little time on it.

CHAIRMAN FELT: You are.

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DELEGATE MARTIN: The establishment of Yellowstone Park, in my opinion, has paid far greater dividends than did the founding or the discovery of gold in Last Chance Gulch or in Bannach or in Alder Gulch or anything else, because it's a continuing resource. Let me tell you about some things that are happening with regard to this. I would think that we should think in terms of flexibility in providing for the future, and that is not to tie something down which can't be changed. Today, in celebration of the Yellowstone Park One Hundredth Anniversary, there is to be a dinner in Washington, D.C. tonight. One of the things that's most obvious is the fact that they have rewritten history and give no credit to the people from Helena and the people from Montana who founded it. There has been a time, and still is today, when Yellowstone Park is being used and a sales tax is being collected from business in Yellowstone Park as well as gasoline for the benefit of the state of Wyoming. I don't think that we want that sort of thing. Another thing that has happened is that under the program that a study team in Yellowstone Park adopted, they have turned around and brought in a bunch of bureaucrats from Washington and other places without regard to the people in the tri-state area. They adopted a master study plan in which they are now going to permit the public generally to use only the blue corridor for visiting Yellowstone Park. They likely, shortly, will be abandoning automobiles and they

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will be doing a lot of other things. The trouble is that with all of this, the people in the area do not have an opportunity to present an opposition to this. Even in the planning of this hundredth anniversary celebration, because congress initiated it, we do have a senator from Wyoming and a representative, John Melcher from Montana who are on the committee. But, the committee acts only after the bureaucrats get through. The result is that we have a situation which I think is a pitiful situation without regard to what's happening to the adjoining area. For instance, now as they begin to tighten up, they're going to eliminate lodging, they're going to eliminate camping, they're even going to require that the garbage of Yellowstone Park will probably have to be hauled out to the adjoining areas. These are some things that I think you have got to think about. We need some flexibility. We should put a fundamental article in there with regard to protection of the environment, but we certainly shouldn't tie ourselves down. I oppose the Cate amendment.

CHAIRMAN FELT: The gentlemen, Mr. Simon.

DELEGATE SIMON: Mr. Chairman. It's noontime and I know we're going to recess, but during that time, I wonder if it would be in order that I ask that this be printed. It is a very vital proposal and we have a form that's supposed to be on our desks. It's a long one for most of us that are not stenographers. I wish it could be printed and on the desks be-

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fore we go. Thank you very much.

CHAIRMAN FELT: Mr. Simon, the request will be noted. For your information and that of the Members of the Committee, there are before us up here, at least -- possibly they've been distributed -- at least two more very far-reaching proposals. If we're going to duplicate one of these for duplication, we'll have to duplicate three. They go, each of them, into the matter of appropriate legal proceedings both against government and against private individuals. So, we will probably be recessing for lunch in about six minutes and we'll go back to these matters when we have completed that recess. It doesn't look as though we'll be able to get to a vote before that time. For what purpose does the gentleman, Mr. McNeil rise?

DELEGATE McNEIL: One minute, Mr. Chairman, to clarify the problem that Delegate Harper was having.

CHAIRMAN FELT: The gentleman, Mr. McNeil.

DELEGATE McNEIL: Delegate Harper's concern dealt with the issue of the citizen's right to participate and the citizen's right to sue. The committee recognized the controversial nature of this section and has set it forth as a separate proposal. It is on page sixteen of the committee report. The right to sue, the right of the citizen to participate, whether he can sue anyone or just the state, we felt was a separate proposal and did not feel that with the specific

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subject of the public trust, which is before the committee now I would like to make one comment to Delegate Arbanas. Delegate Arbanas, the majority committee did not exclude private property. Don't misunderstand that. Read subsection three very carefully. The proposal mandates the legislature to prevent degredation and to prevent unreasonable depletion. That includes private property. It was not our intent to exclude it. The only question that should be determined is the method and whether, under Delegate Cate's proposal, the environment, including land, ought to be held by the state in trust for the benefit of all the people. That is the real issue in that amendment.

CHAIRMAN FELT: The delegate, Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I rise in support of Delegate Cate's proposal. I think the question again comes down to whether or not we want effective environmental provisions in this constitution. If we do, we should vote for it. If we don't, we'll vote on it, and our children and grandchildren will live with the results of our decision today. I don't think we should delude ourselves by thinking that if we put in the provision in section one as it was, that the state will maintain an environment which we all say we want to be clean and healthful, but we're too timid to say we want clean and healthful in there because it may cause some problems later. I think that it was a tragic mistake to

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vote that down. I think this is the greatest example for seeing the emperor's clothing for people to say that it was stronger not to use the positive language describing the type of environment we all say we're for, but no one wants to be explicit in the constitution. I would support the proposal of Mr. Cate. Thank you.

CHAIRMAN FELT: Does the gentleman, Mr. Cate, wish to close?

Mr. Brazier, do you wish to speak on this?

DELEGATE BRAZIER: Yes, Mr. Chairman. For your information, I want to comment at length and read a little scripture. I thought I ought to call that to your attention in your organizing the work of the day.

CHAIRMAN FELT: Yes. (Laughter) Does anyone else feel they have something to say that is not going to take so long?

The delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I was really sorry, I guess, when public trust came up this morning because I thought that we had decided against this. Since it is on the floor, I feel compelled to get up and speak in its defense. I think it has been greatly misunderstood. Before the convention opened, this concept was explained in what I thought was a relatively simple way of looking at a situation which we already have, which was really put into effect last year by

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the Environmental Quality Act, which has been cited before. It states simply that the quality of our environment is held in trust, and that our government is responsible for maintaining the quality of this environment. They already, really, have that responsibility. They maintain it for the benefit of the people, and I don't see anything really that startling in it. I think the Red hearing came in when we got in the idea that, because they were holding the environment in trust, that meant they were going to take over all of the land in Montana. This is really ridiculous, I think. I don't think it was anyone's intent. I don't think it's implied in this, but I do feel that because it has been so widely discussed, and there has been so much feeling engendered on it, that it has pretty much become a useless concept to us. I think a good example of this was the radio hearing we had on Monday night. I counted twelve calls from the Hamilton area. Those of us who have been sitting in committee pretty much know the source of this thinking. None of them really directed themselves to the subject of the broadcast, which was the Natural Resources proposal. They had been told -- I think I heard the statement several times -- that this is interfering with the basic rights of Montana and we ought to let the legislature do that. I also kept hearing the statement that we are making stool pigeons of the people by asking them to report on their neighbors. I don't think anything like that has

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even been mentioned, but I do feel that there are so many groups out working to malign the idea of the trust that even if this body could come to a good understanding of what at least my understanding of it was from the beginning, that we would have a difficult time selling this -- and I say selling -- this to the people of Montana. I think that we're far better off in stating our purpose and our policy for the state in different languages and in different words. I think we've all been balled up on words, and the latest one -- if you want something to think about during lunch -- I've talked to four lawyers in the last hour, who assure me that the word enhance means to enlarge. We might find that when we say we're going to enhance a polluted air, that we are really dedicated to increasing the pollution. Now, give that some thought. Thank you.

CHAIRMAN FELT: The next person I'm going to recognize will be Mr. Eskildsen, but since Delegate Cross and Delegate Robinson may not know, in detail, what each is working on, they might contact each other during this recess period.

The gentleman, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. Before I move to recess, I'd like to remind the delegates that when you have an amendment placed on the desks, if you'd put your name on it, it would give the delegates a chance to find it -- especially when we get a half a dozen of them all at once. Just

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your name on it would really help a lot. I move we stand in recess until 1:30 o'clock P.M. this day.

CHAIRMAN FELT: All those in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it.

(Recess at 12:11 o'clock P.M.)

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MONTANA CONSTITUTIONAL CONVENTION

THIRTY-FIFTH DAY

Wednesday, March 1, 1972 Convention Hall

1:42 o'clock, P.M. Helena, Montana

CHAIRMAN GRAYBILL: The Committee will be in order. The Committee will be in order. Mr. Vermillion, will you please close the back doors? For the journal, Mrs. Acher, will you please show Mr. Kelleher excused? Mr. Kelleher is ill today. Very well, the Chair understands that we are still debating section one, sub one; that the initial section was moved; that Mr. Cate has an amendment to the effect that the state of Montana shall maintain and enhance a clean and healthful environment as a public trust. The beneficiaries of the trust shall be the citizens of Montana who shall have the right to protect and enforce it by appropriate legal proceedings against the trustee. Is there further discussion on Mr. Cate's amendment?

Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow Delegates, I speak to you as a member of the Committee on Natural Resources and Agriculture, and I want to assure all of you that everybody in that committee was most vitally concerned about what we can do to make progress towards the protection of our physical environment. I do think it unfair to suggest or imply

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that because some people viewed one approach as more favorable to another that they were opposed to enhancing the environment. For what it's worth, my great granddad was the person Fred Martin referred to as having suggested that we make Yellowstone Park a national park. For what it's worth, I knew what the word ecology meant ten years ago and I don't think many of you in here can say the same thing. For what it's worth, I pledged to the Montana League of Conservation Voters that I would support an environment proposal that they suggested and set forth. I think most of you did, too. In my own mind and conscience, I think I have gone far beyond that pledge in proposing to this delegation something that I think is an action constitutional proposal which will stand attacks under the federal Constitution, which I doubt the Illinois proposal will do under certain circumstances. Now, we had a choice of two ways to approach this, if I may distill it down. We had a choice of the public trust, which I will comment on in more detail, and we had a choice of the police power concept, which is the way our government has worked since its inception. Now, to the distress of some people, I have to favor the police power concept. I have to favor a type of government that passed nine major ecology and environmental bills just one year ago in this House when nobody knew what the meaning of the word, ecology, was ten years ago, and when the coal fields were being re-exploited as recently as six years ago. I have to go for a police power

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approach which does and did, in the last legislature, create citizens' rights by the uniform administrative procedures act. Now, what the majority proposal does for you, it may be a little hard to grasp for some laymen, it takes out anything that leaves to the supreme court interpretation as much as we could possibly do it. Now, I think that each one of us on that committee tried his hand at at least twenty different proposals and none of them worked, and what we are involved in here now is just a large replay of the same frustrating attempts. Keep that right to interpret out of the hands of the supreme court where it can be locked in forever without being overturned by the legislature. Secondly, what we did is mandate the legislature to take immediate, forceful action. What they did isn't enough. We want more. And, finally, what we did is tell the legislature, you create remedies for the state agencies and for the persons against state agencies and against persons. And, all this, I assure you, will withstand attacks under the federal Constitution and I think will also withstand attacks when we go to the polls on June sixth. To some people this is not enough. This trust proposal has been forwarded. I think it's grasping at straws under emotional circumstances, and we're all emotional but I don't think you draft good statutes, you certainly don't draft good constitutional provisions when you are emotional. Although a trust concept has been employed, as Mr. Cate represents, at various times and various places, it does

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not bring with it the body of jurisprudence that the police power concept does. We have been favored and had called to our attention six or seven cases decided by courts of record in the last hundred years, and most of those are dealing with shore lands. So, we are asked to embrace this concept in a constitution and expand its use, although we have had no real inspection of how it applies, either in the statutes or in other constitutions. And I submit to you that if you were buying a used car you would certainly want to inspect that commodity a lot more than what you are asked to do with a trust concept in this case. One thing that we got some of the witnesses to admit was their intention -- was that a private citizen, a stranger to the property, if you will, could walk in and try to superimpose his subjective opinion of what a better use or a better environmental application of the property was than the actual land owner. Consider that. That exalts to a higher station the right of a stranger to dictate the use of the land than the person who has had the land and in many cases had it in his family for several generations. It also permits a stranger to sue and possibly harass, maybe justified, but at any rate to anticipate what the land owner might do to the property without any real manifestation of usage. And, I submit also that there is no restriction on use of property in these proposals. It applies to snowmobiles, guns, pipes, cigars, how you paint your house, and any other application that the mind can conjure up.

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1 Many of these proposals have asked that we include in the Con-
2 stitution the right of a citizen to enforce. Now, as I take
3 that, it means that all a citizen has to do is file suit and
4 the court has no discretion. He's got to enforce that citizen's
5 opinion. I submit that that's going too far and what it creates
6 is a government of men and not a government of laws. And, as
7 several of the Delegates have pointed out, the actual, practi-
8 cal effect is you're going to socialize property -- let me
9 backtrack a little bit. One of the witnesses, a college pro-
10 fessor, said that what he had in mind was that a citizen could
11 not only sue the property owner but the citizen could sue the
12 state of Montana to force the state of Montana to condemn the
13 property if he didn't like the use of the property. He didn't
14 know where the money was coming from but he had that in mind
15 as one of the usages of the trust concept. Now, I submit to
16 you that that is going to be a form of socialism, if not anar-
17 chy, and it's certainly going to depreciate the value of any
18 land that a property owner has in the state of Montana because
19 he'll never feel safe. I don't think he could get insurance on
20 it, and it's going to undermine the tax base of the state of
21 Montana, and it's going to deprive us of the revenues to run
22 our government, and including the policemen that these people
23 want us to provide to protect their environment. So, I ask
24 you to think again about the implications of what is proposed
25 here, bearing in mind that what the draftsman tells you he

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thinks this means is not necessarily what the supreme court of the United States or the supreme court of the state of Montana is going to think it means once it has a chance to look at the subject. Now, just so there's no mistake, I'd like to call to your attention something that we on the committee were favored with by a strong environmentalist -- and, believe me, I'm sympathetic with them. The only problem that I have is a solution to the problem. This man wrote us, urged us to take action. We're trying to take action. He submitted some literature for our edification and I'd like to share some of it with you. I quote from a column that was printed in the Missoulian on February thirteenth, 1972. It is taken from a New York Times service column by Anthony Lewis. The following extracts are in this enclosure and this was submitted by a person who is very concerned about enhancing our environment. It says: Leading ecologists say that we must adopt a policy of no net increase in capital investment from now on. Only matched depreciation of capital. But, if the United States has such a policy, how could the manufacturers compete in the traditional way of more productive machinery? Would it not follow that new forms of social control would have to be imposed on production, on marketing, on advertising? And how would we be squared with the ideas of our freedom? Merely to state such problems is to make one thing evident, the complete irrelevance of most of today's political concerns -- the complete irrelevance to most

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of today's political concerns. I submit to you, ladies and gentlemen, that this man is very candidly stating what the implication of the trust concept is. It is a form of socialism and I want to call it to your attention because I don't want anybody to walk out of here, after having voted on these provisions, and say, I didn't understand the implications of what was said. Don't let that happen. Now, we are all trying to look ahead and I agree that it is possible in the foreseeable future that maybe all property in the world will be socialized. A hundred years from now, fifty years from now, I don't know. But, I submit to you that that can evolve in the orderly course of events through our present form of governmental structure and without the necessity of exalting strangers' rights to a higher station than those rights of existing property owners. I'd like to state the proposition in another way. Maybe you've noticed I've followed somewhat along with Mr. Holland's position, for better or for worse. I agree that I am trying to be a practical politician about getting this Constitution through. Now, I know some of the younger people will recognize when I say that I like to paraphrase the words of Darrell Royal. You recognize that Darrell Royal is the highly successful football coach of the University of Texas, who has probably won more games in the last ten years than any other coach and he is probably the dean and the chief exponent of what we call ground attack football, as opposed to throwing the forward pass. Now,

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Darrell Royal says, three things can happen when you throw a forward pass --

CHAIRMAN GRAYBILL: Mr. Brazier, let's not teach them football, let's stay on natural resources.

DELEGATE BRAZIER: Two of those things are bad. Now, four things can happen if you adopt the trust concept, Mr. Chairman, and three of those things are bad and none of them are progress. Number one, if you adopt a trust concept here you've driven the last nail in the coffin and you're not going to get any progress out of this Constitutional Convention, and that's bad. That isn't enhancing our environment one iota. Bad thing number two--you're going to get a case involving a big company and you can bet it's going to the U.S. supreme court and I'll bet you whatever resources I've got and my pure physical environment that that U. S. supreme court is going to hold this concept in violation of the federal Constitution, thereby rendering it a nullity, and that's bad and that's no progress. Thirdly, you can get the wrong case before our supreme court -- remember, we've got it locked into the Constitution now. The legislature doesn't get a shot to overrule the supreme court if we're wrong, and they can interpret it in an unfortunate way, and you have made no progress and that's bad and that's not what you want either. Now, some of us throughout this Convention have tried to tell you, rightly or wrongly, in our opinion how we think we can make progress on all mat-

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ters. You cannot cram your theories down the public's throat. They won't buy it. Lawyers have commented on this, legislators, farmers. We had Mr. Metcalf come forward. He wouldn't buy the trust concept. We had Mr. Lindbergh come forward. He wouldn't buy the trust concept. Mr. Darrow, who is probably the foremost champion of environmental controls in Montana backed off of the trust concept, but everybody keeps hanging on. And, up in our committee room we had a sinister looking book setting on the table and everybody said, but Professor Sachs says this, Professor Sachs says that. Now, I didn't have time during the rush of our deliberations, but I finally did get a chance to look at what Professor Sachs says and I want to share that with you, if you will, and this is the scripture reading that I was talking about, and I'm going to read a scripture -- this is a scripture by a heathen, I guess you would call it. Now, I must confess that I opened this book expecting to find some firebrand socialism, how we've got to turn the government over to the people right now and don't let anybody operate property any more, and I must confess that I did not find that. I found a friend that I think I can understand and communicate with and I think he takes a reasonable approach. Contained in the appendix of this book is this much bandied about Michigan statute, which was drafted under a constitution like we've got now and not as strong as the one your committee is suggesting to you. This went into effect fourteen months ago and we have had thirty

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1 five cases in Michigan, none of which have been adjudicated by
2 the supreme court, two of which have been decided as frivilous.
3 Maybe that's right, but I'm going to turn this book over to
4 Mrs. Jean Bowman, the watchdog of the attorneys here and a
5 friend of the League of Women Voters, as soon as I'm through
6 with it and I want her to check me and see if I have misrepre-
7 sented anything to you. Now, what Professor Sachs says, and
8 he's a law professor at the University of Michigan, is -- we're
9 having a lot of red tape in bureaucracies and we ought to do
10 something about that if we are going to move ahead effectively
11 to protect our rights in the environment. He's mostly con-
12 cerned about these real estate developers moving into a slough
13 and putting up a high rise or something. But, it's within the
14 scope of what we're talking about and his point is well taken,
15 and what he says is, here's this trust concept that's been kind
16 of laying dormant, not used enough, and what we've got to do is
17 get into court and argue this as a theory. This is a legal
18 theory, a hook to hang your hat on. And when you go to court,
19 Mr. Lawyer, you tell that judge that we've got a trust here
20 that we've got to protect. And then he says, one way to moti-
21 vate and activate everybody is, let's get a statute that gives
22 people the right to get in and tackle these agencies. Now,
23 there's a friend. I go for that and I go for the trust concept
24 in its place, which is in court, and I'm going to grab it if I
25 ever get a case. O.K., I want to tell you some of the features

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of the statute.

CHAIRMAN GRAYBILL: Mr. Brazier, the Chair would like to inform you that you have spoken fifteen minutes. I will not cut you off but I want you to realize what you've done.

DELEGATE BRAZIER: Mr. Chairman, I have sat here with great restraint through two weeks of debate and I think I'm overdue on this one.

CHAIRMAN GRAYBILL: You go right ahead. I just want you to realize that you've used fifteen minutes so far.

DELEGATE BRAZIER: All right. Thank you. I'm not going to burden you with the statute. It only uses the word, trust, three times which is less than our environmental policy statute in Montana does now. It gives a citizen the right to sue for a declaratory or injunctive relief. It imposes upon him a bond for the protection of the party sued. It raises as a defense that there is no feasible or prudent alternative to the use that the property owner is making of the property. It creates other defenses. It lets the court review the validity of the administrative ruling under which the action is brought. Now, that's reasonable standards and controls and that's imposed by the legislature and that's where it ought to be. And we can do that in Montana whether we adopt the majority plan or don't adopt any at all. Then, finally, we get to the scriptures and then I'll sit down, Mr. Chairman, thanking you for your time. Saint Sachs, the pied piper of the

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trust doctrine in his book entitled, Defending the Environment, did have a few comments upon the applicability of the trust doctrine in constitutions -- in constitutions. If you bear with me, I'll attempt to enlighten you. A final word about declarations of rights in a constitution is needed before leaving this subject. There is an important and insufficiently understood distinction between the declaration of a right to a decent environment appearing in a statute and one appearing in a constitution. A right with constitutional status does indeed create the opportunity for its enforcement in the courts but it also -- and herein lies the dangers, says the author, -- gives courts ultimate authority. That is, an environmental right declared by the courts as a matter of constitutional law cannot be overruled by the legislature. By contrast, a court enforcing a statutory right, even though it may have the same wording as a constitutional provision, can always be overruled by subsequent legislation. A court enforcing a statutory right can always be overruled by subsequent legislation. Now, you may think that this is a lawyer's trick and a little bit of sophistry and chicanery, but that isn't all he says and if you'll bear with me, I'll go on to finish out his thoughts on the subject. He says, this distinction has great implications particularly in the light of American legal history. It is worth recalling here that in the pre-New Deal era a reactionary supreme court invalidated a good deal of important and needed

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1 legislation, thus provoking a grave constitutional crisis that
2 abated only when one member of the court finally changed his
3 position. It was this event that produced the bon mot, a
4 switch in time saved nine. We ought not to create the poten-
5 tial for such crises, remote as they may seem today. A court,
6 even with the best motive, should not be authorized to function
7 as an environmental czar against the clear wishes of the public
8 and its elected representatives. It is not necessary to take
9 such risks. Today, both state and federal legislatures have
10 the authority they need to protect the environment. Today,
11 both state and federal legislatures have the authority they
12 need to protect the environment. Except in rare instances,
13 legislatures need no additional constitutional authority to
14 enact environmental protection laws. A statutory declaration
15 of rights can open environmental matters fully to judicial
16 attention but still leave ultimate decision-making power in
17 the hands of the elected representatives of the public. While
18 the theme of this book has been a plea for greater judicial
19 intervention, it should be eminently clear that our goal is to
20 create additional leverage for the citizen; to add to, not
21 diminish the opportunities for redress; to improve and provoke
22 the democratic process, not to constrain it. Courts are power-
23 ful enough as long as they are unable to build a common law for
24 the environment, remand dubious proposals to the legislature,
25 and declare moratoriums. Moreover, there is a fundamental

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difference between almost all environmental problems and the issues to which the bill of rights so often used as an analogy is addressed. Essentially the bill of rights deals with the problems of permanent minorities and with government oppression of unpopular individual groups. For such problems where the danger is tyranny by the majority, some foil is needed to the majoritarian rule that governs the legislative process. Goving ultimate constitutional authority to the courts in the matter of free speech and the rights of the criminal defendant or the religious dissenter is most appropriate, but environmental questions are preeminantly the problems caused by powerful and well-organized minorities who have managed to manipulate governmental agencies to their own ends. For such issues the need is for a forum that can help to even the political and administrative leverage of the adversaries. If the equalization, per se, can be accomplished judicially, the courts may properly withdraw and then leave the ultimate decision to a truly democratized, democratic process. So sayeth Saint Sachs, chapter eleven, page two thirty-seven. Mr. Chairman, fellow Delegates, I ask you to heed the words of your own prophet. Don't let a bad interpretation get locked into a future constitution. Let the legislature do it. Thank you very much.

CHAIRMAN GRAYBILL: The issue then is on Mr. Cate's motion to put the public trust doctrine, as he states it, into

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section one, article one, of environment. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: Mr. Cate, are you ready to close?

DELEGATE CATE: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: All right.

DELEGATE CATE: I wish to thank Mr. Brazier for stating the company position. First of all, let's talk about the two words, public trust. Apparently a lot of people don't understand what those two words mean and I don't know whether I'm going to change any minds here, and I'm not the most eloquent speaker in the world, but there's not a man here that can say that I'm not sincere. The words, public trust, public means the people. It means you and I. That's what the word public means. Now, trust is a well-defined term in legal terminology and essentially it means that something is held by another entity for the benefit of others. For instance, by your will you can create a trust. You can put money into a bank, the bank becomes a trustee and the bank holds that money for the benefit of those people that you name as beneficiaries. That's a trust. In this case the state is the bank, it's the trustee. The beneficiaries of the trust are the people, the citizens of the state of Montana. The term is that simple. It's that simple. Now, there has been some talk about taking private property. This does not take private property any more

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than the exercise of police power takes private property. You can't burn a bunch of garbage on your land even though that's your private property. You can't run a whore house on your land, even though it's private property. There's a lot of things you can't do with your private land, your private property, because they infringe upon the social good of the people, and that's been traditional throughout the history of this country that we have the right to regulate this so-called sacred thing called private property. Well, you old people had better wake up because the times are changing and if you don't get in step with the times, there's not going to be any time. We haven't got that much time to save our environment and you'd better realize it and if you don't realize it, you'd better start reading what the experts are saying about the environment. I don't mean to get emotional because that's playing into the arms of the others, but I resent deeply the allegation that this is an attempt to take private property, private land from the people and give it to the state, and I resent the implication and the accusation that this is socialism. Our system of consumption in this country has got to change. We've got the Beartooth mountains over there, they're the highest mountains in Montana and I think they're the most beautiful mountains in Montana, and I've been in those Beartooth mountains many times. We've got five mining companies that want to go in there and they want to take those mountains and they want to rip them

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wide open. They want to dig a pit five miles long and three miles wide. Once they've dug that pit and taken that soil and that land out of there and polluted the rivers down below it, it's not going to be there any more, and you can't put it back. You can't put it back once it's gone. You can't put it back. Yet there are tons and tons and tons of wrecked cars laying in junkyards all over and the company says, well, it's too expensive to reprocess those junk cars. It's too expensive to reprocess these reams and reams of paper. Well, let's make it more expensive to go into those mountains and tear them down forever. Let's make it more expensive so those things can be preserved for my children and their children. Man has lived on this earth for two million years. In the last hundred years we have done more detriment to our world than was done in two million years. Now, how is man going to survive if we continue on the present course? How is he going to survive? Do any of you people fly? You know, you get up there at twelve thousand feet, you get up to twelve thousand feet and you've got to have oxygen. There isn't miles and miles and miles and miles of air up there. There's just a thin layer of air and you fly over these mountains from the west and you see this rim of pollution laying below the mountains, just waiting to come over into our state and to pollute our air forever. Something has got to be done and this Convention has got to do it. We've got to respond to the people. The people want this and if you put it to a

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vote of the people, they'll vote for it. I've sat here the last few days and watched one by one you people being taken out into the outer chambers and lobbied by the interests that are against the environment, and I can name you that have been lobbied. Well, it's time for us to decide who is running the state of Montana -- the people who elected us here or the companies. It's that simple. Now, this provision that I've introduced here is a compromise provision. It takes away the right of a citizen to sue the private individual. It's moderated, it's watered down. But, at least it's something that means something, rather than the majority proposal that means nothing. I think that I've said enough and I apologize for getting carried away, but I really believe that we came here to do something for the environment, I really believe it, and I think that we have to rise above our selfish interests and vote for the environment to save it for future generations. We've got one of the last vestiges in our country, one of the last places that can be saved, and we shouldn't be satisfied with the standard that Illinois has or the standard that Michigan has because they're already ruined. They're already ruined. They're never going to come back. But, we can save Montana. We can make Montana a paradise in this country and this is what we ought to act to do, and I urge you to support the public trust concept which is nothing new. It's been around since 1842. Thank you.

(Applause)

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CHAIRMAN GRAYBILL: Very well. Now, for the benefit of the galleries, we do not have demonstrations in the chamber so please refrain from future demonstrations. The issue is on whether or not section one, as proposed by Mr. Cate, his amendment, shall become the statute -- the constitution or not. His amendment says: The state of Montana shall maintain and enhance a clean and healthful environment as a public trust. The beneficiary of the trust shall be the citizens of Montana, who shall have the right to protect and enforce it by appropriate legal proceedings against the trustee. I trust we want a recorded vote on that. Therefore, I will open the vote. Those in favor of Mr. Cate's proposed amendment, please vote Aye on the voting machines and those opposed, please vote No. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the vote is closed. Please cast the ballot.

Aasheim	-	Nay	Aronow	-	Nay
Anderson, J.	-	Nay	Artz	-	Aye
Anderson, O.	-	Nay	Ask	-	Nay
Arbanas	-	Aye	Babcock	-	Nay
Arness	-	Absent	Barnard	-	Aye

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1	Bates	-	Nay	Eskildsen	-	Nay
2	Belcher	-	Nay	Etchart	-	Nay
3	Berg	-	Nay	Felt	-	Absent
4	Berthelson	-	Nay	Foster	-	Aye
5	Blaylock	-	Aye	Furlong	-	Aye
6	Blend	-	Nay	Garlington	-	Nay
7	Bowman	-	Aye	Gysler	-	Nay
8	Brazier	-	Nay	Habedank	-	Nay
9	Brown	-	Nay	Hanson, R. S.	-	Nay
10	Bugbee	-	Aye	Hanson, R.	-	Nay
11	Burkhardt	-	Nay	Harbaugh	-	Nay
12	Cain	-	Nay	Harlow	-	Absent
13	Campbell	-	Aye	Harper	-	Aye
14	Cate	-	Aye	Harrington	-	Aye
15	Champoux	-	Aye	Heliker	-	Aye
16	Choate	-	Nay	Holland	-	Nay
17	Conover	-	Nay	Jacobsen	-	Nay
18	Cross	-	Aye	James	-	Absent
19	Dahood	-	Nay	Johnson	-	Nay
20	Davis	-	Nay	Joyce	-	Nay
21	Delaney	-	Nay	Kamhoot	-	Nay
22	Driscoll	-	Nay	Kelleher	-	Excused
23	Drum	-	Nay	Leuthold	-	Nay
24	Eck	-	Aye	Loendorf	-	Aye
25	Erdmann	-	Nay	Lorello	-	Nay

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Mahoney	-	Excused	Rygg	-	Nay
Mansfield	-	Nay	Scanlin	-	Nay
Martin	-	Nay	Schiltz	-	Aye
McCarvel	-	Absent	Siderius	-	Aye
McDonough	-	Aye	Simon	-	Nay
McKeon	-	Aye	Skari	-	Aye
McNeil	-	Nay	Sparks	-	Nay
Melvin	-	Nay	Speer	-	Aye
Monroe	-	Aye	Studer	-	Nay
Murray	-	Nay	Sullivan	-	Nay
Noble	-	Nay	Swanberg	-	Nay
Nutting	-	Nay	Toole	-	Excused
Payne	-	Aye	Van Buskirk	-	Nay
Pemberton	-	Nay	Vermillion	-	Aye
Rebal	-	Nay	Wagner	-	Nay
Reichert	-	Aye	Ward	-	Nay
Robinson	-	Aye	Warden	-	Aye
Roeder	-	Aye	Wilson	-	Nay
Rollins	-	Aye	Woodmansey	-	Aye
Romney	-	Aye	Mr. Chairman	-	Aye

CLERK SMITH: Mr. Chairman, thirty-four voting Aye, fifty-eight voting No.

CHAIRMAN GRAYBILL: Thirty-four having voted Aye, fifty-eight having voted No, Mr. Cate's amendment fails. The issue is now on section one, subsection one, as proposed by

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the majority. Mrs. Robinson, do you have an amendment?

DELEGATE ROBINSON: Yes, Mr. President, I have an amendment, and if the Clerk will read it --

CHAIRMAN GRAYBILL: Very well. Mr. Clerk, will you please read Mrs. Robinson's amendment which is before you on your desks.

CLERK SMITH: (Reading) Section One. Environment. The public policy of the state of Montana is to achieve and maintain a high quality environment which is clean, healthful and pleasant for the protection and enjoyment of its people and the protection of its natural beauty and natural resources, including wildlife and vegetation. Each person shall have the right to a high quality environment which is clean, healthful and pleasant, and the duty is to act in accordance with this public policy. Each person may enforce such right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitation and regulation as may be provided by law. Signed, Robinson. (End reading)

CHAIRMAN GRAYBILL: Very well, Mrs. Robinson's amendment which is to replace, as I understand it, sections one, sub one, two and three, is before you and Mrs. Robinson, you may discuss it.

DELEGATE ROBINSON: Yes, Mr. Chairman, members of the Committee of the Whole. The purpose of this proposal all in one section, which will delete the present subsections one,

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1 two and three, has three major purposes. One, it gives you a
2 statement of basic public policy, which is broad and flexible
3 so that it will cover presently recognized forms of pollution
4 as well as forms of pollution which are yet unknown or as yet
5 unrecognized. Secondly, it gives you a statement of the right
6 and duty as individuals with respect to the environment. And,
7 thirdly, it gives you an expressed right for citizens to pro-
8 tect the environment through appropriate legal action where the
9 legislature fails to act effectively. This last provision, I
10 believe, is of critical importance. Although I would agree
11 that the legislature should act in this area, past experience
12 clearly shows that our legislature, other state legislatures
13 and Congress have not always done so. The present problems
14 we have with our environment are the product of the inability
15 or unwillingness of legislatures to recognize environmental
16 problems and to take proper corrective action. The problems
17 that this section deals with, and I do not feel that the major-
18 ity report deals with, are these. We have discussed subsec-
19 tion one. We have stated that the state of Montana will main-
20 tain the environment. What does that mean? Of course, we will
21 maintain the environment. We will maintain some kind of en-
22 vironment. There's no other way to go. Section two, we pro-
23 vide that the legislature must provide for the administration
24 and enforcement of this duty. Well, I think this is unnecessary.
25 The legislature already has inherent power to act in regard to

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the environment. We do not mention the court in the majority report, so if the legislature does not provide for this, what access do we have? There is no way to enforce such actions for no one can require the legislature to act in certain ways in regards to the environment or any other matter. Section two also can be construed by the supreme court or by anyone to delegate exclusively to the legislature the power to deal with the environment to the exclusion of the courts. We would be in a much worse position than we are now. Subsection three provides that the legislature must provide adequate remedies for the protection. I talked to Mr. McNeil and his intent in this was to allow the legislature to set up access to the courts to sue, but it does not say that. It says adequate remedies. The legislature could conceivably and perhaps they would say that they have created an environmental quality council and the adequate remedy to protect your environment is to file a complaint with them. That may be an adequate remedy. This further puts the realm of environmental control in terms of the legislature to the exclusion of the court. It seems to me that what we are dealing with here is something that is not a new thing. The League of Conservation Voters sent out a questionnaire in November or the end of October when we were all running for Constitutional Convention. At that time the majority of the members of this body clearly indicated that they would support an environmental provision

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similar to the Illinois constitution. This provides, as does my proposal, a statement of the policy of the state and the right of the individual to approprate legal proceedings to enforce that right. This is all that the section that I have proposed to you does. I think the biggest objection to this and to the whole concept of citizens being able to sue has been the fact that in Montana you already have standing to sue in terms of the environment. In many instances this is true. We have the traditional common law concepts of these three ways whereby we can sue -- negligence, nuisance and trespass. These were not implemented in regards to the environment but have been used in that regard. But they do not really effectively deal with the problem because to be able to sue under these three, you have to be able to prove that there were actual damages, either monetary or physical. I contend that if you are really trying to protect the environment, you'd better have something whereby you can sue or seek injuctive relief before the environmental damage has been done; it does very little good to pay someone monetary damages because the air has been polluted or because the stream has been polluted if you can't change the condition of the environment once it has been destroyed. One of the problems has been frivilous law suits. The case -- the states of Michigan and Illinois, you've heard them millions of times -- I hate to bring it up again but the claim of frivilous law suits has simply not been justified.

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I think the last sentence of my proposal -- subject to reasonable limitation and regulation as may be provided by law -- is a clear guarantee and a safeguard against these frivilous law suits. What Illinois did to implement this section in their constitution, they enacted the environmental protection act which set up standards by which the citizens could legally sue another person or a governmental agency. It seems to me that this should probably be the least consideration because it simply has not worked out that way. I would submit to you the other problem and concerns with the private property aspect of it. It seems to me that if a few frivilous law suits do occur and that a few frivilous law suits is the price that we must pay for adequately protecting our environment for ourselves and future generations, the choice should be clear. The citizens should not be helpless to protect themselves and the environment.

CHAIRMAN GRAYBILL: Very well, is there discussion on Mrs. Robinson's amendment?

Mr. Skari.

DELEGATE SKARI: Mr. Chairman, I support Mrs. Robinson's amendment. I think we are spending quite a little time on this and yet I think it's very important that we do spend some time on this. I think we should try to imagine here that we could look down on this earth as if through the eye of a camera, the kind of camera that is equipped to take a series

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of time exposures over a long period of time. I think this would give us a dramatic example of the changes which can take place, given enough time--say, fifty years. It doesn't happen suddenly; it happens rather slowly. It's sort of like a thief in the night. I think that Mr. Lindbergh sort of pointed this out with his view from the air. He pointed out that he had been flying for fifty years and he had visited Montana several times. He noticed the changes that were taking place. I'm sure this is much more dramatic in other areas. Fifteen years ago I visited the Santa Clara valley in California and I visited this valley again about a year ago and I saw the dramatic change. It was not for the better. I think that we are going to have to look ahead to the same sort of problems, the same population growth in this state. I think we could consider the Gallatin or the Bitterroot and the Flathead -- some of these beautiful valleys we have -- and what would happen to them if we do not take some action. I would like to point out to you that today is the first of March. It's a -- to me it seems more than the twenty-first when the first of March rolls around. It's getting towards spring and I suppose they're probably calving down around the Powder River now. The grass on the lawn is starting to green up a little bit and it's beginning to look like spring. This is the time when the earth renews itself. I suppose we take it for granted, but we should say, really, my God, it's happened. We should be extremely grateful for it.

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But, I would submit to you that it doesn't happen all over this earth, even at this present time. Mr. Lindbergh pointed out the island of Java. What has happened there, it looks like a giant hoard of locusts had crept over the island. I think we are facing a problem here that man has not faced before, that we simply have the technical ability to destroy ourselves. I think, then, that we have to face up to this problem and possibly we can do something here constitutionally. I think we should combine two basic rights -- the right to private property and the legal right to protect what is most valuable to us, and I say to you that this is not incompatible. I think this delegation is inclined to protect our environment. I think that this is the general feeling. I think I support Mrs. Robinson's proposal because it is very clear and simple and I think the best way to do this. It does three things which she outlined. It sets the tone of public policy. It defines the rights of citizens, and it provides for the enforcement of this. Yet, it allows the legislature to set certain guidelines and procedures. For these reasons, I strongly support the amendment by Mrs. Robinson. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: Mr. President, I wish to support Mrs. Robinson's motion. She has given the reasons for this proposal very well and I won't repeat them. I simply want to add that I feel, as she has said, that the real heart of this

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proposal is the last sentence, which calls for the right to sue. If there were not the right to sue persons or parties, there is no guarantee that the public policy or the individual right to a good environment is to be preserved. I came to this constitution with a deep concern about many of the core areas of the Constitution and I still have these great concerns. I am very much interested in improving local government. I am serving on that committee. But, I had come to feel that this is the one great issue before this Convention. I think that probably local government can muddle along for twenty-five or thirty more years, much as I would hate to see it do so without reform, but I do not think that we have many years in which to remedy our -- and save our environment.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I rise in support of Mrs. Robinson's substitute motion. Mrs. Robinson, in her speech, referred to filling out of the questionnaire when we were all running for the Constitutional Convention. I, too, filled out one and when I came to that question about what we would do, or how I stood on the environment--putting something into the Constitution--as closely as I remember, I said something like this -- that I was not in favor of putting an environmental protection clause into the Constitution which had no meaning, which would be used to simply lull the people that they had some protection when they really didn't. And, I be-

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lieve that Mrs. Robinson's substitute motion gives the people the right to do something about their environment, and I support it.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow Delegates, I stand in support of Mrs. Robinson's proposal. Maybe you haven't noticed, but I have a funny accent. I come from Massachusetts, and I remember some of the greatest times of my life were spent on the banks of Waldon Pond. It was a great joy to hitchhike out there and spend time sitting beside Waldon's cottage -- it's no longer there, some of the bricks and the foundation are there -- and dreaming. Well, I was back there this summer and Waldon Pond is no more. It is completely polluted and there's only about half the water left. I love Montana. This is why I'm here. And, I hope it remains the way it is today because I want it to be like this for my children. And, I think if you think of the best parts of Montana that you have known and hope that it remains the way it is, then there is only one way that you can vote.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I support Mrs. Robinson's substitute motion. I, sometime ago, quite a few years ago, adopted the test for what is proper for the government to do and what not, and that boils down to somebody else's philosophy. I'm sure I borrowed it -- that the government exists

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for the sole purpose of doing necessary things for people that they can't do for themselves. Mrs. Robinson's amendment fits that bill. I think the members of this committee ought to heed that spontaneous applause we heard a few minutes ago after Mr. Cate's spirited speech, and I'm happy and I thank God that my arteries aren't so constricted that an idea like this can't get up there. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, I'd like to submit that I think that as a society we have a weak sense of history and a weak sense of the future, an inadequate sense of the past and an inadequate sense of the future. And, I'd just like each of you to question yourselves about your own children, your own grandchildren and your own great grandchildren, and I submit to you that we are using something right now that belongs to them. We're using their land and we're using their air and we're using their water, and we have no right to do this. We have no right to take it away from them, and I think that this amendment would help deter the course that we are now taking and will give us -- will insure for them something that they have every right to.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. President, fellow Delegates, first of all, I'd like to observe that sometimes in the course of this debate it may have seemed that we were against each-

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other. Really, I get the impression, and I should say it, that all of us are looking for a strong article. Our differences, I think, come from just how to do it. I feel that the -- Delegate Robinson's proposal is a fine compromise that should be looked at very carefully by those who have been on one side or the other. It has some very distinct advantages. First of all, the first advantage that I liked, that I think that in the last sentence the safeguards that many people worry about are much clearer than any article I have seen so far. The safeguards are there and they're well put. The second advantage of the amendment, it seems to me, is the fact that it spells out very clearly that each person has a duty. Other articles that we have seen perhaps concentrate on the government or some agency whereas this talks about each person having a duty, and that's very important. And, lastly, for my own sail, anyway, I like the fact that it goes beyond just the clean, healthful and protection area. That's pretty utilitarian. The thing I like about Montana is more than just clean. I like the beauty of Montana and I like it to be pleasant and I think those things take us perhaps into some philosophical issues but more beyond just the clean and the safe.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would my seat mate, Mrs. Robinson, yield to a question?

CHAIRMAN GRAYBILL: Mrs. Robinson?

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DELEGATE ROBINSON: Yes, I will.

DELEGATE REICHERT: My question relates to the standing to sue. Do you feel an individual should suffer actual damage before being permitted to sue?

DELEGATE ROBINSON: No, I don't, because -- Mr. Chairman, I don't because I feel you are not doing anything to protect the environment. I know a lot of attorneys are worried about this and I did some research to see what court decisions had been rendered on this very problem of standing to sue without proving actual monetary or physical damages, and I can give you about ten cites, both from the supreme court--the U.S. Supreme Court Reports, and from the federal reports, indicating that both the federal court and the supreme court have held that a person does not have to be monetarily or physically injured on behalf of environmental degradation to sue. They simply may have an interest in the environmental degradation. I think that this is certainly the trend that the federal courts are taking. I can see no reason for us to wait for Godeau on this and linger behind, too. There is -- on all of the federal cases there is a definite trend that you do not have to be injured or have monetary damages to be able to sue.

DELEGATE REICHERT: Thank you. May I speak now, Mr. Chairman?

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: I wish to speak in support of

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Mrs. Robinson's proposal. During the last session of the legislature, there was a bill introduced - House Bill 33 - and if you read the house journal of the last session, you will find that this bill did not get very far. These people who say that the legislature can take care of this adequately, I feel, are wrong. I think that our Constitution must contain a provision to protect our environment. I receive more mail in this area than any other and it's really a very, very touching situation when you receive so many mail -- so much mail from children. I have some mail here from some doctors in Great Falls, and they state: Consider thoughtfully the future of Montana and specifically the hopes we have for a quality environment for our children and our grandchildren. I think we'd be remiss in our duty at this Convention if we at least did not do what Illinois did and our friends, the North Dakotans. I'd like to read you their section, part of their section on environment: Each person has the right to a healthful environment and may enforce this right against any part, governmental or private, through appropriate legal proceedings subject to reasonable limitations as the legislative assembly may provide by law. This is very similar to the proposal that Mrs. Robinson has submitted. I really contend that we are just as good as the people of North Dakota, and I think that all jokes notwithstanding, that the least we can do is come up with a provision that is as good as that of the North Dakota constitution.

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I really plead with my fellow Delegates to support this proposal of Mrs. Robinson.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I wonder how many Delegates have read -- well, in one page it appears on page seventeen -- which is the minority proposal on the right to sue. It kind of seems increasingly apparent to me that a lot of people have not read what is contained in the report. The reason that the majority did not support a separate section saying the right to sue, the paragraph three of our report states the legislature is directed to provide adequate remedies for the protection of the environmental life support system from degradation and to provide adequate remedies to prevent unreasonable depletion of natural resources. Now, to those of us that studied what we were doing for a long time before we did it, we felt that this, in itself, is a lot stronger than certainly the proposal that we're looking at right now. If all you are wanting to add is a difference in wording on the right to sue, I would suggest that you would do it when we get along to the minority report number four, and I notice Mrs. Cross has a slightly reworded one. I ask you to look at her -- at Mrs. Robinson's proposal and look at the three sections of the majority proposal by the committee, and read it without paying too much attention to how beautiful the words sound but what their meaning actually is, and then vote

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your conscience.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Will -- Mr. Chairman, will Delegate Robinson yield to a question, or several questions?

DELEGATE ROBINSON: Yes.

DELEGATE MURRAY: I have been, for some time now, reviewing the environment article of the state of Illinois and also that of the state of North Utopia -- or, I guess, North Dakota. It seems it must be Utopia the way we are quoting, and I ask you why you have added the language which does not appear in either of those two provisions - and the duty to act in accordance with this public policy?

DELEGATE ROBINSON: I added that language because I feel that it is a valuable addition, that people do -- it's not only a right of the citizens of Montana to have a clean environment, it is also their duty to try to maintain that environment, and I submit that where rights exist corresponding duties also exist, and I think that it was just an attempt to recognize that fact.

DELEGATE MURRAY: Mr. Chairman, if I may inquire further. Mrs. Robinson, did you find any precedent for that type of duty anywhere else?

DELEGATE ROBINSON: No, I did not find any precedent for this type of duty in terms of a constitutional provision.

DELEGATE MURRAY: Did you find any reference to duty

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as you have described it herein, in any legislative enactment?

DELEGATE ROBINSON: Yes.

DELEGATE MURRAY: Where?

DELEGATE ROBINSON: There are several. Just a minute. The environmental protection act that substantiated Illinois' constitutional provision clearly delineates also the duty as well.

DELEGATE MURRAY: Any other states?

DELEGATE ROBINSON: That's the only one I have right now.

DELEGATE MURRAY: Is it in the same language as you have it here?

DELEGATE ROBINSON: I don't know, Mr. Murray, if it's in the very same, exact language. I think the word, duty, regardless of how it's construed, has a pretty definite meaning and I don't know if it's the exact, same wording or not.

DELEGATE MURRAY: The reason I'm asking you these questions, Mrs. Robinson, is so the record will show your intent relative to them and I would -- I'm real concerned about your reference to duty. I can see the establishment of a right but I'm concerned about the establishment of a duty and I would appreciate it, since you seem to have done considerable legal research on this matter, and being a lawyer myself I like to take the benefit of other people's research if I can, if you would please tell me what you think the impact of the addition

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of that clause in this statement means?

DELEGATE ROBINSON: I certainly think that the impact of it is kind of precedent to the last sentence of that clause, where I mention that each person may enforce such right against party. I think it amplifies the right to sue as perhaps also being a part of that duty. That duty is in protecting or causing the state of Montana, which we have established as a public policy the right -- the duty of each individual to see that the public policy of the state of Montana is protecting the environment, and perhaps the only way a citizen may fulfill that duty is by bringing appropriate legal action in a court of law.

DELEGATE MURRAY: Now, then, let me ask you this. I think your reference to duty is well. Should I fail to sue somebody for a pollution problem, could you sue me because in the Constitution I had a duty to act?

DELEGATE ROBINSON: I can find no precedent for that type of litigation. I can find precedent for -- on federal statutes and federal decisions whereby, if you were remiss in your duty to sue, I could also sue the person that you should have probably sued.

DELEGATE MURRAY: No, no, that's not my question, Mrs. Robinson.

DELEGATE ROBINSON: I understand your question. I said that I could not find precedent for that type of action.

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I do not know.

DELEGATE MURRAY: Then, is it fair to assume that we do not know what we are doing if we adopt this language?

DELEGATE ROBINSON: No, sir, I don't think it's fair to assume that. I think it might be fair to assume that you don't know what you're doing if you adopt this, but I don't think that it's fair to assume that I don't. I refer you specifically to Delegate Proposals Number Twenty and Twenty-One by Mr. C. B. McNeil, who also deals with the public policy of the state of Montana and the duty of each person to provide, maintain and enhance a quality environment for the benefit of the people. I would like to say, Mr. Murray, if you are satisfied with this whole article without the duty business, the fact that you're satisfied with it would certainly -- you know, I wouldn't get all that upset about leaving the duty out if I could get you to agree with that much.

(Laughter)

DELEGATE MURRAY: Well, Mrs. Robinson, you probably aren't going to get me to agree to it anyway but I am concerned, Mr. Chairman, if I might address my remarks to the Delegates and not Mrs. Robinson. You may be seated, ma'am. I am concerned about the establishment in the Constitution of a second level of duty, which this particular language causes me some concern about. I feel, through talking with Mrs. Robinson -- I state this for the record -- that her language, subject to

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reasonable limitation and regulation as may be provided by law -- and she may object if this is not her interpretation and the intention, her intention with respect to the addition of that language -- that that clearly means that there shall then be no litigation brought by, or under this particular provision of the Constitution, should it be enacted, without the legislature having provided the implementation for such litigation.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: I feel now that I must speak now to further clarify the point that Mr. Murray just raised because, as far as I can determine by speaking to the attorney general in Illinois, who adopted a similar provision in their constitution as what I am proposing here, his statement does not really merit much consideration. The attorney general in Illinois -- their provision stated, not that a person would not have the right to sue unless the legislature took action. On the contrary, a person has the right to sue, the right to enforce his clean and quality environment and can do so without limitation unless the legislature acts to limit him. This is a self-enforcing provision and if the legislature wants to limit it and restrict it, which they have already done in this state by the -- in Title Sixty-Nine of our present codes -- then this would be appropriate. But, it is not, as Mr. Murray indicated, Mr. President. And while I have the floor, and I

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1 won't get up again, in reference to Mr. Gysler's remarks con-
2 cerning the minority report and concerning the right to sue,
3 I have read it. I have read it very carefully. I have con-
4 cluded that it is probably adds nothing and could be more harm-
5 ful than good. First of all, you will recognize that citizens
6 already have the right to legal recourse against governmental
7 agencies that fail to carry out duties delegated by the legis-
8 lature. This right of judicial review is presumed even in the
9 absence of express constitutional or statutory provisions.
10 The state of Montana's administrative procedure act specifically
11 permits judicial review of administrative actions. The danger
12 I see in that minority section was that it would seem to re-
13 strict the right to sue, as a constitutional matter, to actions
14 against state agencies. This, taken in connection with the
15 entire majority proposal, could well be a final nail in the
16 coffin against the citizen's right to protect the environment.
17 CHAIRMAN GRAYBILL: Mrs. Bugbee.
18 DELEGATE BUGBEE: This is from the constitution of
19 North Dakota, and I'd like to read: Environment. The public
20 policy of the state and the duty of each person is to conserve,
21 develop and utilize natural resources -- and then it goes on.
22 It has the word in there exactly.
23 CHAIRMAN GRAYBILL: Mr. Kamhoot.
24 DELEGATE KAMHOOT: Mr. Chairman, I took a great deal
25 of time on this subject this morning and I'll not do so again.

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I know for sure that everyone here wants to protect the environment of Montana in the best way they can figure out. I am very appreciative of the fact that many of the Delegates came to Montana because they like it better here than where they came from. Now, I'm a third generation here and I still like it here. My grandfather had a pack string that he ran out of Helena, right where we are now, in 1868. And I plan to stay here. But, you know, in Mrs. Robinson's proposal here, there's a lot of words that we battled for four weeks in committee and I would like to ask Mrs. Robinson if she can define what these words mean -- healthful, high quality, pleasant and reasonable? She used healthful twice, high quality twice, pleasant twice and reasonable once. I hope, Mae Nan, that you can clear me up on this because no one else has been able to in five or six weeks of debate up here.

CHAIRMAN GRAYBILL: Will you yield, Mrs. Robinson?

DELEGATE KAMHOOT: May I ask Mrs. Robinson a question, Mr. Chairman?

CHAIRMAN GRAYBILL: Will you yield, Mrs. Robinson?

DELEGATE ROBINSON: Yes, Mr. Chairman, I will yield.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ROBINSON: I would first like to point out that these words were chosen for those very considerations, the fact that in the majority report on subsection one you did not care to use any qualifying environment in phrases. As I

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pointed out earlier, these words have been used in other states' environmental protection acts and other state constitutions, as well as in the federal protection -- environmental protection act. Now, I'm not going to stand here and define the words to you because as you well know, these are subject to court interpretation. What we are asking the legislature to do, and what they did in Illinois, when we say that people can sue on behalf of the right to protect the environment within reasonable limitations as prescribed by law, what happens is that the legislature decides what ramifications are involved in a clean, healthy, high quality environment--whatever you choose. If you will look at the majority proposal on page three, you provide for unreasonable depletion of natural resources. You provide for adequate remedies. Now, you can't tell me that the words, adequate, or the words, unreasonable, are any clearer in your proposal on page three than the words, quality or healthful or clean, are covered in my proposal. I will submit to you that litigation has been done on these words, clean and healthful. There are guidelines and there are standards to use and I'm not going to attempt to tell you, you know, what these things mean but I can guarantee to you that the supreme court will certainly be able to tell you.

DELEGATE KAMHOOT: Thank you, Mae Nan. Well, I still haven't found out what they meant but I'm sure the supreme court will advise me if I contact them. Thank you, Mr. Chair-

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man.

CHAIRMAN GRAYBILL: Very well, the question is on Mrs. Robinson's amendment to section one. Is there further discussion?

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I submit to you that as a Montanan, I know what my duty is in helping to preserve the environment, but unless we pass something like this, I will not have the right. Now, the issue is not so much on the duty as on the right, as Mae Nan has said. This, I think, finally, after all day's debate, we've gotten down to the issue. Here we have a clear statement of the rights of the individual, the right to have a high quality environment. Secondly, the right to have the right to enforce the right to a high quality environment. Now, we don't argue about having a treasure in this Treasure State. We've got a treasure in this Treasure State, as Mr. Cate said, that two billion people in this world would give almost anything to have, and I want the right to fight to protect this right for children like this little one upstairs here, for the young people, and for all these generations to come, and this is the only document we have before us that will give the individual this right.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I rise in support of Mae Nan's proposal. I felt I could not vote for Mr. Cate's proposal be-

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cause of the emotional connotations which it had already received in the press and in our state, but I feel that this proposal does carry, as has been stated well by many people, the things that we need to protect our environment and to assure that it will be adequately safeguarded. I feel that so much has been said already, but I would simply join in the statement that Rick Champoux made a moment ago, and I've always wanted to call him Breck Shampoo ever since the night of our happy time. But, I am in Montana by choice, as are many other people. I could live on the east coast or the west coast. We have chosen the last fourteen years to make this our home and hope to make it our home for the rest of our lives. I lived in Big Horn county in eastern Montana for five years, enjoyed watching the sunset on the coulees and the country that rolls down there with sagebrush and yucca. That's a very fragile environment, as has been pointed out before; when you tear it up to find the coal, something has to be done to make it a valuable resource afterward. It seems that much of what we are trying to achieve here is more definitely guaranteed by Mae Nan's proposal than by those that we've had before us. I would see it as a compromise move and yet a move that intelligent people of Montana can get behind and support. By the way, the people down there in the sagebrush country where I lived for a number of years, are not without intelligence. Most of them married the school teacher, you know, after they homesteaded, and they know the

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issues and they're deeply concerned. Our western Montana that we cherish so much and enjoy backpacking -- I even complained to Charles Lindbergh when he was here that I didn't like him flying over it, once I got up there in that high country. It really is a beautiful resource and we don't want to see it destroyed. Too much would be said if I continued the conversation. It seems to me that this gives us the means. Let's enact it if at all possible. I support this motion.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow Delegates. I lost my book so I'm forced to be brief. I rise to speak, just so you don't get the impression that I have compromised the basic principles of constitution drafting that I have been trying to brand on your minds. The exchanges between Mrs. Robinson and Mr. Murray and Mrs. Robinson and Mr. Kamhoot point out the problem. They have asked her to define words and, of course, that may be an unfair question but, you know, somewhere down the line, the supreme court is going to interpret those words and then they're going to be locked into a constitution where nobody can get them out. And, what that supreme court is going to do at that time, it's going to say, well, we're going to have to give effect to all provisions of our Constitution, including private rights and other citizens' rights that have been recognized over the years, and I'll bet you -- I'll give you odds that they come up with an interpretation that sets you

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back, and then you have no remedy short of another constitutional amendment. This is all I'm trying to tell you. Don't leave it to interpretation. If you want citizens' rights, fine. I imagine that I'll be one of the beneficiaries to that particular result, but what you're doing here is, you're playing Russian roulette to solve a problem and you've got three bullets in the chamber. Now, if you'll analyze this thing without emotion, I think you'll see that you have a better chance to make progress if you don't let somebody else lock it in.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in support of Mrs. Robinson's proposal. One salient fact forces me -- compels me to go for the strongest environmental protection we can. My area, the Anaconda-Butte area, has a rate of lung cancer and emphysema that is twice that of the national average. These people who work in the mines and who work in the smelter cannot endure, Mr. Chairman, unless their environment -- working environment is cleaned up for them. For this reason, I will support Mrs. Robinson's environmental proposal and will also support any environmental proposal which I feel will give some aid to these poor working men who have spent their lives in the mines and in the smelter.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I hesitate very much to get up and raise any question about this article be-

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cause it will be immediately interpreted that I am speaking on behalf of a client of our office, which is the Hoerner-Waldorf Company of Missoula. Well, I am not, because, fortunately that company is in the process of spending many million dollars in cleaning up its environment. It will match their health standards of the air purity act of Montana, and it doesn't care less about what we do in this respect. But, I have been impressed by the rather ready acceptance of all hands with the language that is contained in this proposed amendment and I really wish that, simply for your own personal judgments, you would examine it more closely. The Illinois constitution does contain the words, healthful; does contain the right to sue. So, also, does the North Dakota document refer to a healthful environment and of course we all know that health is a very significant personal interest that we all have. This is what prompts Mr. McKeon's remarks. But, incorporated in this proposal here, for the first time that I know of in any document in the country are the terms, pleasant, enjoyment, protection of beauty and protection of wildlife. And, I suggest to you -- now, in addition to that, it says that each person has the right to a pleasant environment of this nature and each person may enforce that right against any party, governmental or private. The thing that prompts me to rise here is to caution all of you in your own personal considerations of protecting the environment -- and it is in the same category as peace and war.

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I don't know anybody who really advocates war, and I don't know anybody who advocates a poor environment. I have a whole host of grandchildren whose future welfare in the environment I have just as much interest in as anybody else. But, I am troubled here that we may be erecting in the Constitution a very fertile source of litigation for the benefit of lawyers and others, and these are the examples that trouble me, and if maybe this can be cleared up in this discussion, I would be very happy to hear them cleared. But, I would visualize that there are people who do not like to see logging going on in the forests and I think their right to have a pleasant enjoyment of the natural beauty of the forest, including vegetation, includes the right to stop logging. I think that those who like to see a lovely river valley or stream flowing in its natural state would have the right to attack any proposed residential subdivision or development, however well planned, that would somehow cover the land in that area with homes for people to live in, who, themselves, might like that area in order that they might get closer to a pleasant environment. In the course of our -- well, after we got over here, I got a letter from a lady who lives down in the Nine Mile country near Missoula and I assume that the others got the same -- a Mrs. Bonderan, I think her name was. She was very aggrieved about the decimation of the wildlife in the Nine Mile country, the disappearance of the deer and the other animals in the forest, and if she feels this way she has a person-

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al right against the state of Montana and the fish and game department, I should think, to protest or to prevent the fish and game season which would allow the taking of fish or game from the Nine Mile area where she lives. Now, I am not manufacturing wild things, I hope, in bringing up these things because this language, as Mrs. Robinson very carefully tooled and it is very carefully all-inclusive and it very carefully gives an individual right to any person to enjoy and to have all these things and to enforce it, and I think I would be compelled to advise Mrs. Bonderan, for example, that this would give her a right that she would be able to enforce and I think the qualifier in the last sentence there, about what the legislature is going to limit or regulate, could never be interpreted by any responsible court as granting the right in the first instance, in the first two sentences of the Constitution, and then withdrawing it or qualifying it or limiting it in such a manner in the third sentence that it would, in fact, become meaningless and unreasonable. In other words, I think these rights as granted are, in effect, self-executing, as she pointed out, and all I want to do in this discussion is to point out to you that this is the most sweeping kind of statement that could be drafted and that it is pregnant with all kinds of possibilities for the future in Montana that are not found in any precedent. Of course there is no precedent for this because the other constitutions do not go this far, and I feel that as

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a responsible body we should deliberate here on the extent to which we wish to enlarge the periphery of the environmental protection because you can see here that we are creating rights by one citizen against another, crisscrossing all through the whole panorama of human activity. And, I think we should be very careful before we get carried away with enthusiasm for doing the right thing and overdo it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I shall be very brief but I do want to respond to Mr. Garlington. If I understand the burden of his song is that this is untested and untried, there is no precedent for it. As you all know, Montana was the first state ever to have a war conducted underground over in Butte. We were the first state to have a senator who was not seated in the United States Senate. Just once before I die, I would like to see Montana be the first state that did something good.

CHAIRMAN GRAYBILL: Mr. Rebal.

DELEGATE REBAL: Mr. Chairman, I resist Mrs. Robinson's proposal but not on the basis that I'm not interested in a strong environmental doctrine. As a member of the Natural Resources Committee, I would like to say that all of us worked very hard toward a strong environmental article. After hearing many hours of testimony, we were faced with many questions. For example, when it came to such things as the definitions of

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clean, healthful, pleasant, enjoyment--and, also, when it comes to the protection of its natural beauty and natural resources, including wildlife and vegetation. We were asked such questions as, does it mean that if you protect your wildlife that you can't shoot a duck? Does it mean that if you are going to protect your vegetation that you can't mow down a blade of grass? Now, these are the things that I see in this and, believe me, I'd like to see a very strong environmental article but I do resist Mrs. Robinson's. Thank you.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. President, I'll take a chance of cutting hay under this proposition and I'll also take a chance on cutting grain under this proposal, but I think as a whole we have all been very, very neglectful. Now, I was born and raised in the Flathead and we just took things for granted until all of a sudden, in 1963, I happened to be at a creek that was known as Ashley Creek, and here come down -- I have a picture of it -- a fish, a dead fish come floating down the creek, and that's when I became concerned about this environment, and I think we're doing a disservice to our children and our grandchildren if we don't do something about this environment, and I would be for a stronger -- I was one of those that was for public trust, but I will compromise and I will go along with Mae Nan's proposal. I think that will do what we think should be done. I thank you.

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CHAIRMAN GRAYBILL: The issue is on Mrs. Robinson's amendment to the environmental section, section one.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I was hoping to join the parade of saints but there have been many intervene since then -- some of the enemy. I rise in opposition to Mrs. Robinson's amendment for the simple reason that for every hour we shall spend here discussing these issues, the committee has spent days. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg, you were up. Did you wish to speak?

DELEGATE SWANBERG: Yes, Mr. Chairman. It seems to me there's a basic flaw in Mrs. Robinson's approach when she says that we all have a right to a high quality environment. I submit that for, lo, these last twenty-five or thirty years, we have been participating willy-nilly in the destruction of this environment. It is we who have allowed these cars to pile up in these wrecked car junkyards. It is we who have polluted our streams with sewage without having sewage disposal plants. It is we who have allowed industry to dump offal into the streams, such as coming from meat packing plants. And all this has been done while we sat idly by and did nothing. Then suddenly we wake up and discover to our horror and astonishment that our environment is not what it should be. It is we who have littered our streets. It is we who have littered our camp-

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grounds. There was a time here in Montana when it was considered almost a crime to go into a campground and fail to clean it up when you left. I regret to state that things have changed since those days. It used to be almost a crime for a person to go through another man's gate and not close that gate behind him when he went through. I now submit that times have changed and this, too, is done willy-nilly, without regard to that man's cattle. Do we have a right to a healthful environment in view of our past actions? I submit that probably we do not. I submit that what we have instead is an unholy mess that is going to have to be cured by legislative action and it is going to have to be done feelingly and gropingly to contend with this mess that we have created, and for these reasons, I would resist Mrs. Robinson's proposal. Now, for the edification of the rest of the body, our state legislature has not been exactly remiss in this matter. In 1971, they passed a law, section 65-601 is where it begins, and it's a seven-page law, and I think we'd save a lot of time if the Delegates here would take a look at this law and see what's already been done. I'm not going to read at length, Mr. President, but I would like to quote a few lines from it. They say the purpose of this act is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to environment and stimulate the health and welfare of man; to enrich the

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understanding of the ecological systems and natural resources important to the state; and to establish an environmental quality control council. The legislative assembly, recognizing the profound impact of man's activity on the interrelation of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resource exploitation and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy -- well, I could read on and on, Mr. President, but I'll refrain. At any rate, I would very seriously urge the rest of the Delegates to get hold of this and study it. It will aid us greatly and I think shorten the time for the consideration of this proposal. And, thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, during this debate there has been a lot of discussion of fear which is rampant in this body and elsewhere, according to my reading of frivilous suits in the private area of our state should this program be written into the Constitution. It is in the private sector where people are evidencing fear. I have heard very little concerning the fear that would come from people who injure federal or state lands. That seems to be all right. And, it's

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the little fellow who is being used as a -- being frightened by this ghost that is being raised. I think that the little fellow who gets into a nuisance suit is going to get into the nuisance suit anyway. It's already a danger for him. If he has a stock feeding yard and the odor is bad, his neighbor may bring a nuisance suit against him or may even sue for damages. This has happened. All sorts of things of that character are possible, but we don't hear about the things that might transpire as a result of some large organization eroding the country or wrecking the landscape or polluting the streams or one thing and another. I'm afraid that it's a case of the hand of Esau but the voice of Jacob. I think that we are trying to -- somebody is trying to muddy the water and frighten all the little people in Montana, of whom there are many more than there are large corporations, with the consequence that the delegates will be chased back into their holes and refuse to vote.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President, I rise in support of Delegate Robinson's amendment here. I know during the course of our deliberations here the argument has been used many times that if we put such-and-such into the Constitution the people are going to vote it down, and I would like to use some of the same reasoning, I guess, but maybe in reverse. It's that if we in this body don't take a strong stand in regard to the environment, that maybe the people will think that we have not

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done a good job and say, well, we're just going to have to send it back to them and have them do a better job next time. So, I would encourage you to support Delegate Robinson's amendment. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Thank you, Mr. President. I speak in opposition to Mrs. Robinson's amendment because I feel that the article itself, in the first section, will cover this. Much of it is statutory and the legislature can enact these same provisions. In thinking of this at this time, I doubt if there's a neighbor that I couldn't sue right now. I think that I have been aware of clean air and clean water perhaps many years before Mae Nan was born. I've been interested in health and welfare and I still am, but I cannot go along with this because I can see all types of jury suits. Also, in my area there are areas where the water level raises from time to time. The sewers and the wells intermingle. Who is going to sue who? It's real interesting.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Robinson's proposal to amend section one of the environmental part of the natural resources proposal. Mrs. Robinson, are you ready to close?

DELEGATE ROBINSON: Mr. President, I would like to just briefly reiterate some of the comments that have been made since I last spoke. Mr. Garlington brought up the usage of

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some of these words. It reminds me of the last hearing that the Natural Resources Committee had, and if you'll remember, for those of you who were there, an attorney from Helena, Mr. Picotte, who represented North Dakota Utilities, was also concerned about the words, clean, healthful, quality, because they were too metaphysical -- if you'll remember that terminology. Mr. Garlington's objections seemed to be very similar to me. We are worried about someone being able to interpret these words. When we were on the majority proposal, as I indicated to you a while ago, no one mentioned the problem we would have in determining adequate or unreasonable or any of the words used there. Further, I'd like to indicate to you that in the bill of rights, in the present and in the proposed, we have certain metaphysical terms such as inalienable rights, which include the right of pursuing life's basic necessities, or of enjoying or defending their lives and liberty, of acquiring, possessing and protecting property, and of seeking their safety, health, happiness in all lawful ways. These are pretty metaphysical terms, too, it seems to me. But, it seems to me that judging by contemporary community standards we have had no trouble in determining what liberty means, or what freedom or what inalienable rights mean. I submit that we are not going to have any trouble in determining what clean and healthful and high quality mean. Secondly, in terms of Mr. Rebal's comment about would you be able to shoot a duck because you're not

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protecting the natural resources or the wildlife and vegetation. It seems to me that if you read this carefully and just look at the last sentence where it says, through appropriate legal proceedings, subject to reasonable limitation and regulation as may be provided for law, there's your answer. We're not going to have these ridiculous things happening and the legislature is reasonable. We can at least expect reasonable guidelines from them. Thirdly, Mr. Swanberg's comments -- do we really have the right? Have we utilized this right? Perhaps we have been remiss in our right and that's why I think it's important to include the section as I have, dealing with duty. We have had this right and perhaps we haven't been very careful to uphold it, and that's why I think we -- to insure adequate enforcement of this right, let's put the duty in there, too, to make it meaningful. In terms of Mr. Scanlin's objections, he's right in a way. The legislature hasn't really been remiss. As a matter of fact, they have done some very good things in terms of the environment. The thing that bothers me is that we, as a Constitutional Convention, trying to look ahead in a hundred years, we're not even willing to approach the subject with the same -- the same aggressiveness that the legislature has done so in the past. I think that if you were really concerned with living up to any of your campaign commitments, if you want something reasonable, if you want something that is meaningful in terms of the environment of Montana, you

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should support my proposed amendment.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Robinson's proposal to amend section one by adding the words: The public policy of the state of Montana is to achieve and maintain a high quality environment which is clean, healthful and pleasant for the protection and enjoyment of its people and the protection of its natural beauty and natural resources, including wildlife and vegetation. Each person shall have the right to a high quality environment which is clean, healthful and pleasant, and the duty to act in accordance with this public policy. Each person may enforce such right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitation and regulation as may be provided by law. I presume you want a roll call vote. We'll have one. All in favor of putting this in as section one of the environmental article, vote Aye, and opposed vote No. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please cast the ballot.

Aasheim	-	Nay	Arbanas	-	Aye
Anderson, J.	-	Nay	Arness	-	Absent
Anderson, O.	-	Nay	Aronow	-	Nay

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1	Artz	-	Aye	Driscoll	-	Nay
2	Ask	-	Nay	Drum	-	Nay
3	Babcock	-	Nay	Eck	-	Aye
4	Barnard	-	Nay	Erdmann	-	Nay
5	Bates	-	Nay	Eskildsen	-	Nay
6	Belcher	-	Nay	Etchart	-	Nay
7	Berg	-	Nay	Felt	-	Absent
8	Berthelson	-	Nay	Foster	-	Aye
9	Blaylock	-	Aye	Furlong	-	Aye
10	Blend	-	Nay	Garlington	-	Nay
11	Bowman	-	Aye	Gysler	-	Nay
12	Brazier	-	Nay	Habedank	-	Absent
13	Brown	-	Aye	Hanson, R. S.	-	Nay
14	Bugbee	-	Aye	Hanson, R.	-	Nay
15	Burkhardt	-	Aye	Harbaugh	-	Nay
16	Cain	-	Aye	Harlow	-	Aye
17	Campbell	-	Aye	Harper	-	Aye
18	Cate	-	Aye	Harrington	-	Aye
19	Champoux	-	Aye	Heliker	-	Aye
20	Choate	-	Aye	Holland	-	Nay
21	Conover	-	Aye	Jacobsen	-	Nay
22	Cross	-	Aye	James	-	Aye
23	Dahood	-	Nay	Johnson	-	Nay
24	Davis	-	Nay	Joyce	-	Nay
25	Delaney	-	Nay	Kamhoot	-	Nay

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Kelleher	-	Excused	Rollins	-	Aye
Leuthold	-	Aye	Romney	-	Aye
Loendorf	-	Aye	Rygg	-	Nay
Lorello	-	Nay	Scanlin	-	Nay
Mahoney	-	Excused	Schiltz	-	Aye
Mansfield	-	Nay	Siderius	-	Aye
Martin	-	Nay	Simon	-	Nay
McCarvel	-	Nay	Skari	-	Aye
McDonough	-	Aye	Sparks	-	Nay
McKeon	-	Aye	Speer	-	Aye
McNeil	-	Nay	Studer	-	Aye
Melvin	-	Aye	Sullivan	-	Nay
Monroe	-	Aye	Swanberg	-	Nay
Murray	-	Nay	Toole	-	Excused
Noble	-	Nay	Van Buskirk	-	Aye
Nutting	-	Nay	Vermillion	-	Aye
Payne	-	Aye	Wagner	-	Nay
Pemberton	-	Nay	Ward	-	Nay
Rebal	-	Nay	Warden	-	Aye
Reichert	-	Aye	Wilson	-	Nay
Robinson	-	Aye	Woodmansey	-	Nay
Roeder	-	Aye	Mr. Chairman	-	Aye

CLERK SMITH: Mr. President, forty-three voting Aye, fifty-one voting No.

CHAIRMAN GRAYBILL: Fifty-one Delegates having voted

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No, forty-three having voted Aye, the proposed amendment is defeated. The Chair will recognize Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I wish to offer a substitute motion.

CHAIRMAN GRAYBILL: Yes, Mrs. Reichert. Proceed.

DELEGATE REICHERT: This is being printed. I think it is being distributed now.

CHAIRMAN GRAYBILL: Do you want the Chair to read it? Do you want the Clerk to read it?

DELEGATE REICHERT: Yes, would you please read it?

CHAIRMAN GRAYBILL: All right, will the Clerk please read Mrs. Reichert's substitute motion?

CLERK SMITH: (Reading) Section One - Public Policy, Legislative Responsibility: The public policy of the state and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy. Section Two - Rights of Individuals: Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law. Signed, Reichert. (End reading)

CHAIRMAN GRAYBILL: Very well, Mrs. Reichert's amend-

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ment has two sections. I take it to be your intent to substitute in place of section one, sub one, two and three, if it passes. Is that right, Mrs. Reichert?

DELEGATE REICHERT: That's right, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, you may speak on your motion.

DELEGATE REICHERT: I'm sure most of the Delegates will recognize this as the Illinois provision, verbatim. I had hoped I would not have to submit this motion. I had hoped that the last one would have passed, but since we want something that is tried and true, something that's been included in a constitution before, I had this ready. Now, I want to remind the Delegates again that last fall, when a questionnaire was sent to us, many of us felt that the Illinois provision would be fine for the state of Montana. I am very much afraid of the majority proposal for several reasons. I consulted with a lawyer and he said section two and section three of the majority proposal would do more harm than good. I'd like to read you his comments about section two of the majority proposal. I'll read the section first, the subsection of section one: The legislature must provide for the administration and enforcement of this duty -- and that's the duty to maintain the clean environment. Now, the direction to the legislature to act in this section adds nothing positive in terms of environmental protection and may be extremely detrimental. The legislature

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has the inherent power to act regarding environmental matters. In addition, there is no way to force such a direction for no one, including the courts, can require the legislature to act in a certain way with regard to environmental or any other matters. In other words, if this section of the majority proposal were included in our Constitution, it would be harmful to future generations of this state. Section three -- that, too, is considered to be harmful. This section would add further credence to the position that matters relating to the environment are exclusively within the control of the legislature. With such an interpretation, if the legislature did not act, there would be no remedy. As has already been noted, the legislature cannot be forced to provide any particular type of remedy or remedies. The majority appears to believe that standing to sue should not exist without actual provable money damages. If we wait until then, of course, it is too late for the degradation to the environment will have already occurred. I hope that the Delegates will realize that the Illinois provision is our last hope to have something meaningful in our Constitution, and I'll rest at this point.

CHAIRMAN GRAYBILL: Is there further discussion of Mrs. Reichert's proposal?

Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, there seems to be some people who may think that we're suggesting -- that there's

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a suggestion here of something pretty radical, and we just got through talking about one proposal that was somewhat similar to what North Dakota had introduced. I point out this little news article that we've had on our desks. The North Dakota constitution has been released for the citizens to take a view of it and they have something similar to this new proposal about environmental protection and, according to this one news article, they say in North Dakota, initial observations of North Dakotans about their new proposed constitution is that it's pretty much a middle of the road document that doesn't wander very much to the left or right. For people who want a constitution that takes off on a lot of unexplored trails, this one isn't it. So, I think what we're doing here is not suggesting anything radically new or far out, but something I really think the people expect us to do. It's something that's middle of the road, if you will, and I think this assembly should adopt it.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, will Mrs. Reichert yield to one question, please?

CHAIRMAN GRAYBILL: Mrs. Reichert?

DELEGATE REICHERT: I'm glad there's just one. Yes, Mr. Murray.

DELEGATE MURRAY: Is our legislature to be called the general assembly now?

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DELEGATE REICHERT: I beg your pardon? Oh --

DELEGATE MURRAY: Well, you used the same language and that means you used general assembly.

DELEGATE REICHERT: Oh, I guess I should substitute. Thank you.

DELEGATE MURRAY: You believe that's a stylistic change?

DELEGATE REICHERT: Yes, very stylistic.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: May I ask Mrs. Reichert a question, please?

CHAIRMAN GRAYBILL: Will you yield?

DELEGATE REICHERT: Yes, Mr. Gysler.

DELEGATE GYSLER: Mrs. Reichert, you mentioned that you consulted an attorney. Would you mind telling us who the attorney was?

DELEGATE REICHERT: McCrory of the law school.

DELEGATE GYSLER: Thank you. Really, from my own personal viewpoint, I think, again, that we are getting into another article simply because there is a right to sue provision, and I would like to say what I did a little while ago, that I believe this should come up when the minority proposal comes up. As far as the rest of it, I again ask you, take and read it. Don't look at the beautiful words but look at the meaning because it's the meaning what is interpreted and not

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the beautiful words. You can write things and have them sound wonderful, but if they're going to have any meaning, you have to have meaning in them, and I believe the majority proposal has done this so I resist this amendment.

CHAIRMAN GRAYBILL: Is there any further discussion of Mrs. Reichert's proposal?

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, just briefly, I must remind the Delegates that the majority took the word, healthful, out to strengthen the majority proposal. We did not want the supreme court of this state or the legislature to be able to say that the environment in Montana, as we know right now, can be degraded to a healthful environment. So, our purpose in leaving that word out was to strengthen it. I would like also to remind the Delegates that the Illinois provision does not contain subparagraph three of the majority proposal which speaks precisely to the point that concerns Jerry Cate so much, and that is there is no provision by which the legislature can prevent -- and this is anticipatory -- can prevent unreasonable depletion of the natural resources. I submit that if you will read that majority proposal again and again, you will find that it is the strongest of any constitution, and the issue to which George Harper is still concerned is not foreclosed. That issue will be put before this Convention in the form of an amendment from our chairwoman, Louise Cross. It will speak specifically

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to the issue of the citizen's right to sue anybody as a separate issue and to be added as a subparagraph four of this proposal if it passes. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow Delegates, I did not get a copy of this amendment for some reason so I was at a little bit of a disadvantage. However, I want to address my remarks to just two words--healthful environment--and it's my understanding that the amendment we have before us simply modifies environment by the word, healthful, and it also includes the provision of standing to sue, if you will. I oppose this amendment on that very basis because I feel that if we, as a Constitutional Convention of Montana, use our line of defense on the environment on the basis of healthful, then we, in fact, might as well forget it, because what I'm concerned about in Montana is not a healthful environment. This country is going to have to address itself to the question of a healthful environment. What I'm concerned about is an environment that is better than healthful. If all we have is a survivable environment then we've lost the battle. We have nothing left of importance. The federal government will see to it one way or another, if it's in its power, that we have an environment in which we can manage to crawl around or to survive or to in some way stay, quote and unquote, alive. But the environment that I'm concerned about is that stage of quality of the en-

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vironment which is above healthful, and if we put in the Constitution that the only line of defense is a healthful environment and that I have to show, in fact, that my health is being damaged in order to find some relief, then we've lost the battle, so I oppose this amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: May I ask Mr. Foster a question?

CHAIRMAN GRAYBILL: Mr. Foster, will you yield?

DELEGATE FOSTER: Certainly, Mr. Chairman.

DELEGATE REICHERT: Would you like the word, clean, inserted?

DELEGATE FOSTER: Well, I supported the original amendment this morning which had a clean and healthful environment and certainly would approve of including clean.

DELEGATE REICHERT: I'd be glad to include the word, clean. We'd be a little different from Illinois' constitution. We'd have an additional word but I would -- I don't know how to do that parliamentarily to include the word, clean, in the second section -- each person has the right to a clean and healthful environment. If I can get Mr. Foster's vote with that addition, I'd be glad to. And, I think it is a point well taken. This business with words really confuses me, and I know we were talking about the word, adequate, before. I know what happened to public hearings because of the word, adequate, and yet the majority uses the word, adequate, and nobody yet has

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explained what adequate remedies are. I think that there is difficulty with words, but I think we are going to have to face this problem, and I think, as I said, the least we can do is have the Illinois provision in our Constitution with the addition of the word, clean.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I must point out one additional omission and this was the principle reason I opposed Delegate Robinson's, it deleted from the majority proposal the affirmative duty to improve our environment, and if we ever get back to the majority proposal, subsection one, I will move to change that word, enhance, to improve so there will remove any doubt as to what that word is intended to mean.

CHAIRMAN GRAYBILL: Mrs. Reichert, are you ready to close?

DELEGATE REICHERT: I am, I believe, and I think perhaps Mr. McNeil is right. I would like section one in addition to the Illinois provision, so perhaps we could move for the acceptance of the Illinois provision and then we can get section one of the majority proposal, and then I think we'll have a fine section on environmental protection for the state. I talked to Mr. McNeil during the lunch hour and I said, Mr. McNeil, you are one of those who, in answering the questionnaire sent last fall, said he could approve of the Illinois provision. And, I'll remind all of you others -- know who said they

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could approve the Illinois provision -- I have the list right here -- but Mr. McNeil was one of them and at lunch time he thought he could, so if we could do this and have his first section of the majority proposal, we'd have a better provision than Illinois.

CHAIRMAN GRAYBILL: Very well -- do you want to close, too, Mr. McNeil? O.K.

DELEGATE McNEIL: Mr. Chairman, I'd like the priviledge of responding to that. I did not say I would support the Illinois provision, in response to that inquiry. I said I would advocate a stronger provision. The Delegate Proposal which I submitted to this committee substituted the word, quality, for the word, healthful. My thinking, hopefully, was that we would want something stronger than healthful. I support our majority position here now that to maintain and improve the environment of this state is much stronger than Illinois.

DELEGATE REICHERT: Mr. Chairman, may I close again?

CHAIRMAN GRAYBILL: If you think you need to.

DELEGATE REICHERT: I want to thank Mr. McNeil because I think he's perfectly right. We'll have the Illinois provision and the majority proposal section one and we'll have a strong section on the environment.

CHAIRMAN GRAYBILL: Very well, so many as shall be in favor of -- do you want a roll call vote?

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DELEGATES (Unidentified): Yes.

CHAIRMAN GRAYBILL: All right. So many as shall be in favor of Mrs. Reichert's proposal on environment, which is the Illinois provision, please vote Aye on the voting machine. So many as are opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll close the ballot. Please take the vote.

DELEGATE CATE: Cate votes Aye.

CHAIRMAN GRAYBILL: Very well, we'll check it. Will the Clerk please add Mr. Cate's Aye vote?

Aasheim	-	Nay	Belcher	-	Absent
Anderson, J.	-	Nay	Berg	-	Nay
Anderson, O.	-	Absent	Berthelson	-	Nay
Arbanas	-	Aye	Blaylock	-	Aye
Arness	-	Absent	Blend	-	Nay
Aronow	-	Nay	Bowman	-	Aye
Artz	-	Aye	Brazier	-	Nay
Ask	-	Nay	Brown	-	Nay
Babcock	-	Nay	Bugbee	-	Aye
Barnard	-	Aye	Burkhardt	-	Aye
Bates	-	Absent	Cain	-	Aye

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1	Campbell	-	Aye	Harper	-	Aye
2	Cate	-	Aye	Harrington	-	Aye
3	Champoux	-	Aye	Heliker	-	Aye
4	Choate	-	Aye	Holland	-	Nay
5	Conover	-	Aye	Jacobsen	-	Aye
6	Cross	-	Aye	James	-	Aye
7	Dahood	-	Nay	Johnson	-	Nay
8	Davis	-	Nay	Joyce	-	Aye
9	Delaney	-	Nay	Kamhoot	-	Nay
10	Driscoll	-	Nay	Kelleher	-	Excused
11	Drum	-	Nay	Leuthold	-	Aye
12	Eck	-	Aye	Loendorf	-	Absent
13	Erdmann	-	Nay	Lorello	-	Nay
14	Eskildsen	-	Nay	Mahoney	-	Excused
15	Etchart	-	Nay	Mansfield	-	Nay
16	Felt	-	Absent	Martin	-	Nay
17	Foster	-	Aye	McCarvel	-	Nay
18	Furlong	-	Aye	McDonough	-	Aye
19	Garlington	-	Absent	McKeon	-	Aye
20	Gysler	-	Nay	McNeil	-	Nay
21	Habedank	-	Nay	Melvin	-	Nay
22	Hanson, R. S.	-	Nay	Monroe	-	Aye
23	Hanson, R.	-	Aye	Murray	-	Nay
24	Harbaugh	-	Nay	Noble	-	Nay
25	Harlow	-	Aye	Nutting	-	Nay

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Payne	-	Aye	Sparks	-	Nay
Pemberton	-	Nay	Speer	-	Aye
Rebal	-	Nay	Studer	-	Nay
Reichert	-	Aye	Sullivan	-	Nay
Robinson	-	Aye	Swanberg	-	Nay
Roeder	-	Aye	Toole	-	Excused
Rollins	-	Aye	Van Buskirk	-	Aye
Romney	-	Aye	Vermillion	-	Aye
Rygg	-	Nay	Wagner	-	Nay
Scanlin	-	Nay	Ward	-	Nay
Schiltz	-	Aye	Warden	-	Nay
Siderius	-	Aye	Wilson	-	Nay
Simon	-	Nay	Woodmansey	-	Aye
Skari	-	Aye	Mr. Chairman	-	Aye

CLERK SMITH: With Mr. Cate voting Aye, forty-three voting Aye, Mr. President, forty-seven voting No.

CHAIRMAN GRAYBILL: Forty-seven having voted No, forty-three having voted Aye, the motion is defeated.

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, if I may at this time, I move to amend section one, subsection one, as has been placed on the desks of all the Delegates.

CHAIRMAN GRAYBILL: Very well, would the Clerk please read Mr. Campbell's amendment?

CLERK SMITH: (Reading) Mr. Chairman, I move to amend

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section one, subsection one, page three, by deleting and amending as follows: The state of Montana and each person must maintain and enhance a clean and healthful environment in the state for the enjoyment and protection of present and future generations. Signed, Campbell. (End reading)

CHAIRMAN GRAYBILL: Mr. Campbell, I take it that adds the words, clean and healthful, and it adds the words, the enjoyment and protection of the present environment, is that correct?

DELEGATE CAMPBELL: It does.

CHAIRMAN GRAYBILL: Very well. Mr. Campbell.

DELEGATE CAMPBELL: Thank you, Mr. Chairman. I think we're back at the original premise again. If I may have your attention, please. We are back to the original position again. Do we, as the citizens of the state of Montana have overwhelmingly said in every poll and indication, they want some provision on the environment. Are we now going to say that we do want a clean and healthful environment or are we going to duck the responsibility that we've been talking about all day today? Now, I do not buy the theory that not describing the type of environment that we want for the state of Montana makes it a stronger environmental provision. I think that since environment is the number one issue, it's incumbent upon this Convention to live up to their responsibilities. A clean and healthful environment, as you will notice, as Mr. Swanberg said.

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is something less than the legislature has already stated in their description of what they want for the state of Montana. I do not feel we can accept anything less than a clean and healthful environment. If you'll check the codes, you'll see that the last legislature, which we all commend for doing such a good job, and who had the courage to put into this state the strongest environmental provision yet that this state has ever adopted, and they had the courage to go home to their electorate and they got from that electorate the satisfaction and, really, the commendation of the people of the state of Montana. Now, they describe as a safe, healthful, productive, esthetically and culturally pleasing surroundings. Now, has anyone suggested such a far-reaching proposal like that for the Constitution? No. Now, certainly, we have to at least live up to the present statutes of the state of Montana and I do not think that you can go home and walk down the streets of your home town between the time this Convention adjourns and the time this is voted on --. May I have your attention? Your honor -- Mr. Chairman, I don't feel half the Delegates are listening and I would call for their attention.

CHAIRMAN GRAYBILL: I'm watching and I'm rapping them down when there's not attention. You have their attention. Go ahead, Mr. Campbell.

DELEGATE CAMPBELL: If I may proceed. I sincerely do not feel that you can go to your home town and walk down the

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street and someone will come up to you and say, what did you do about the environment, finally, in the Constitutional Convention? Under the majority proposal, you'll have to look them in the eye, knowing that you spent all the money to come over here to do something they were interested in, and say, yes, we the people in Montana at the Convention decided to have one. Now, what is he going to say? You decided to have an environment. Well, isn't that wonderful. We've already got an environment. What did you decide that you wanted the environment to be? Well, some radical proposals were made about public trusts -- were thrown out; other things -- pleasant environment. And someone suggested clean and healthful. Now, we're all for that but we certainly don't want to use the words. Now, what is this average citizen going to say? He's going to say, you went all the way over there for something that you agreed in and said that you were too timid to put it in the Constitution like we all wanted to have it? This certainly is the emperor's clothing again. If you can all convince yourselves that not describing the type of environment that you want is so strong and so important and going to give you this extra protection, then I submit to you that when you get home some voter is going to ask you what it is and they're going to see right through it, that there's no description on the type of environment that you put on here at all. And there won't be any more North Dakota jokes because the joke will be on Mon-

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tana. So, I submit that this is a basic minimum. If we are going to do anything, this is the place to do it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, is there discussion on this?

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman -- oh, you turned the volume up. I rise to offer a substitute motion for Mr. Campbell's amendment. It will read basically as the majority proposal does, page three, line nine. Change the word, enhance, to improve. Line ten, delete the words, of the state. Insert before the word, environment, Montana so that the substitute motion will have subsection one of section one read as follows: The state of Montana and each person must maintain and improve the Montana environment for present and future generations.

CHAIRMAN GRAYBILL: Very well, Mr. McNeil's substitute motion would have section one, sub one, read: The state of Montana and each person must maintain and improve the Montana environment for the present and future generations.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this is basically the majority proposal rephrased, and deletes the words, clean and healthful. Our intent is not to permit the legislature or the courts to permit our present environment to be degraded to what they might interpret a clean environment or a healthful

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environment to mean.

CHAIRMAN GRAYBILL: Very well, is there further discussion on Mr. McNeil's motion?

Mr. Campbell.

DELEGATE CAMPBELL: I oppose Delegate McNeil's proposal. What this does, in effect, is lock into the Constitution the present level of pollution in those areas which it is already too much, and Missoula is not going to be satisfied to say that your air will remain as polluted as it is now forever in the future. We sincerely want to improve the quality of our air. I do not believe -- and I believe you stated it sincerely when you said this was the intent of your majority report to insure that the present level of pollution, or lack thereof, will be maintained by the state of Montana. I feel that this should be defeated, that you should improve and try for a clean and healthful environment, and this is worse than nothing. It would absolutely take away the incentive that the legislature has had. Who knows, it may put their acts unconstitutional. I would strongly oppose this amendment.

CHAIRMAN GRAYBILL: The Chair would only point out to you, Mr. Campbell, that it does use the word, improve. I don't know what that may mean. Is there other discussion?

Mr. Rebal.

DELEGATE REBAL: Mr. Chairman, as a member of the Natural Resources Committee, I support Mr. McNeil on this motion.

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CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, as a member of the Natural Resources Committee that worked for about five weeks on this and heard every argument there could possibly be presented, I think -- I've heard all of them that's been made here today -- we're being worn down. I've been keeping track of it here and it looks like the proposals -- there are several of them yet -- they're probably for the purpose of getting a few votes away each time because people are getting tired of it, but I'm going to stay right here. I'm going to vote for Mr. McNeil's proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow Delegates, I, too, am with Mr. Scanlin and these others that have talked about the majority report. We know they spent weeks in working this out. They have used the wording and I believe our committees should have a little more consideration than we have been giving them. Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, the committee may feel, after hearing the long list of witnesses they heard, that they have come up with the strongest statement that they can come up with on environment for Montana, but I have been hearing from environmental groups around the state, from students who have looked at this, and I have not yet found one who has

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thought that this was a satisfactory article. In fact, they have ridiculed it and I think they will ridicule us if we go home with an article like this for the environment.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: I feel that Mr. McNeil's motion should take away any doubts about the committee's desire that we improve and that the environment, and especially in places like Missoula -- I don't know, to me there is absolutely nothing magic with words, clean and healthful, that can be interpreted by courts to mean different things. What the committee really wants to do and what we felt we have done in our wording is to make sure that there is no judicial interpretation that can come along that can say that the environment, as we have it at the present time or when our Constitution is accepted or rejected, but hopefully accepted, that can say that our environment can go downhill from that time. The only way that it can go is uphill, is get better, and this is why we have stayed away from all the adjectives. I endorse Mr. McNeil's amendment.

CHAIRMAN GRAYBILL: Very well, the question is on Mr. McNeil's amendment to add the word, improve, in place of the word, enhance, in line nine of section one on page three; and to add the word, Montana, before the word, environment, so

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that it says, the Montana environment; and strike the words, of the state. So many as shall be in favor of Mr. McNeil's proposal, please -- do you want a roll call?

DELEGATE KAMHOOT: Roll call.

CHAIRMAN GRAYBILL: Very well. So many as shall be in favor of Mr. McNeil's proposal, please vote Aye on the voting machine. So many as shall be opposed, vote No. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: If not, the vote is closed. Please take it.

Aasheim	-	Absent	Belcher	-	Aye
Anderson, J.	-	Aye	Berg	-	Nay
Anderson, O.	-	Aye	Berthelson	-	Aye
Arbanas	-	Aye	Blaylock	-	Aye
Arness	-	Absent	Blend	-	Aye
Aronow	-	Aye	Bowman	-	Aye
Artz	-	Aye	Brazier	-	Aye
Ask	-	Aye	Brown	-	Nay
Babcock	-	Aye	Bugbee	-	Nay
Barnard	-	Aye	Burkhardt	-	Nay
Bates	-	Aye	Cain	-	Absent

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1	Campbell	-	Nay	Harper	-	Nay
2	Cate	-	Nay	Harrington	-	Aye
3	Champoux	-	Aye	Heliker	-	Nay
4	Choate	-	Absent	Holland	-	Absent
5	Conover	-	Aye	Jacobsen	-	Aye
6	Cross	-	Aye	James	-	Aye
7	Dahood	-	Absent	Johnson	-	Aye
8	Davis	-	Aye	Joyce	-	Aye
9	Delaney	-	Aye	Kamhoot	-	Aye
10	Driscoll	-	Aye	Kelleher	-	Excused
11	Drum	-	Aye	Leuthold	-	Aye
12	Eck	-	Nay	Loendorf	-	Aye
13	Erdmann	-	Aye	Lorello	-	Aye
14	Eskildsen	-	Aye	Mahoney	-	Excused
15	Etchart	-	Aye	Mansfield	-	Aye
16	Felt	-	Absent	Martin	-	Aye
17	Foster	-	Nay	McCarvel	-	Aye
18	Furlong	-	Nay	McDonough	-	Aye
19	Garlington	-	Absent	McKeon	-	Aye
20	Gysler	-	Aye	McNeil	-	Aye
21	Habedank	-	Aye	Melvin	-	Aye
22	Hanson, R. S.	-	Aye	Monroe	-	Nay
23	Hanson, R.	-	Aye	Murray	-	Aye
24	Harbaugh	-	Aye	Noble	-	Aye
25	Harlow	-	Nay	Nutting	-	Aye

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Payne	-	Aye	Sparks	-	Aye
Pemberton	-	Aye	Speer	-	Nay
Rebal	-	Aye	Studer	-	Aye
Reichert	-	Nay	Sullivan	-	Aye
Robinson	-	Nay	Swanberg	-	Absent
Roeder	-	Aye	Toole	-	Excused
Rollins	-	Absent	Van Buskirk	-	Aye
Romney	-	Nay	Vermillion	-	Aye
Rygg	-	Aye	Wagner	-	Aye
Scanlin	-	Aye	Ward	-	Aye
Schiltz	-	Aye	Warden	-	Aye
Siderius	-	Nay	Wilson	-	Aye
Simon	-	Aye	Woodmansey	-	Aye
Skari	-	Nay	Mr. Chairman	-	Aye

CLERK HANSON: Mr. Chairman, sixty-eight Delegates voting Aye, nineteen voting No.

CHAIRMAN GRAYBILL: Sixty-eight Delegates having voted Aye, nineteen having voted No, Mr. McNeil's substitute motion amending section one, subsection one, to read: The state of Montana and each person must maintain and improve the Montana environment for present and future generations, has passed. The Chair will recognize Mr. Campbell.

DELEGATE CAMPBELL: I move to amend the motion by inserting the words, after improve, a clean and healthful environment for Montana for present and future generations.

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CHAIRMAN GRAYBILL: You want to put in the words after improve, a clean and healthful Montana environment?

DELEGATE CAMPBELL: Yes.

CHAIRMAN GRAYBILL: That's the way it is, and leave out in the state. For the enjoyment and protection of -- are you putting that in again?

DELEGATE CAMPBELL: No.

CHAIRMAN GRAYBILL: You're leaving that out this time. O.K. Very well, Mr. Campbell's motion has the effect of adding the words, a clean and healthful Montana environment to the status of the motion -- or, status of the section as it now stands, so that the thing would read: The state of Montana and each person must maintain and improve a clean and healthful Montana environment. Is there further discussion on Mr. Campbell's amendment?

(No response)

CHAIRMAN GRAYBILL: Do you want a roll call vote? Very well, all those in favor please vote Aye on the voting machines; all opposed, please vote No. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

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1	Aasheim	-	Absent	Choate	-	Absent
2	Anderson, J.	-	Nay	Conover	-	Aye
3	Anderson, O.	-	Nay	Cross	-	Aye
4	Arbanas	-	Aye	Dahood	-	Absent
5	Arness	-	Aye	Davis	-	Nay
6	Aronow	-	Nay	Delaney	-	Nay
7	Artz	-	Aye	Driscoll	-	Aye
8	Ask	-	Aye	Drum	-	Nay
9	Babcock	-	Nay	Eck	-	Aye
10	Barnard	-	Aye	Erdmann	-	Nay
11	Bates	-	Aye	Eskildsen	-	Absent
12	Belcher	-	Nay	Etchart	-	Nay
13	Berg	-	Aye	Felt	-	Absent
14	Berthelson	-	Nay	Foster	-	Aye
15	Blaylock	-	Aye	Furlong	-	Aye
16	Blend	-	Absent	Garlington	-	Absent
17	Bowman	-	Aye	Gysler	-	Nay
18	Brazier	-	Nay	Habedank	-	Aye
19	Brown	-	Absent	Hanson, R. S.	-	Nay
20	Bugbee	-	Aye	Hanson, R.	-	Aye
21	Burkhardt	-	Aye	Harbaugh	-	Aye
22	Cain	-	Aye	Harlow	-	Aye
23	Campbell	-	Aye	Harper	-	Aye
24	Cate	-	Aye	Harrington	-	Aye
25	Champoux	-	Aye	Heliker	-	Aye

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1	Holland	-	Nay	Reichert	-	Aye
2	Jacobsen	-	Aye	Robinson	-	Aye
3	James	-	Aye	Roeder	-	Absent
4	Johnson	-	Nay	Rollins	-	Aye
5	Joyce	-	Nay	Romney	-	Aye
6	Kamhoot	-	Nay	Rygg	-	Nay
7	Kelleher	-	Excused	Scanlin	-	Nay
8	Leuthold	-	Nay	Schiltz	-	Aye
9	Loendorf	-	Aye	Siderius	-	Aye
10	Lorello	-	Nay	Simon	-	Nay
11	Mahoney	-	Excused	Skari	-	Aye
12	Mansfield	-	Nay	Sparks	-	Nay
13	Martin	-	Nay	Speer	-	Aye
14	McCarvel	-	Nay	Studer	-	Nay
15	McDonough	-	Aye	Sullivan	-	Nay
16	McKeon	-	Aye	Swanberg	-	Absent
17	McNeil	-	Nay	Toole	-	Excused
18	Melvin	-	Aye	Van Buskirk	-	Aye
19	Monroe	-	Aye	Vermillion	-	Aye
20	Murray	-	Nay	Wagner	-	Aye
21	Noble	-	Nay	Ward	-	Nay
22	Nutting	-	Nay	Warden	-	Aye
23	Payne	-	Aye	Wilson	-	Nay
24	Pemberton	-	Nay	Woodmansey	-	Nay
25	Rebal	-	Nay	Mr. Chairman	-	Aye

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CLERK HANSON: Mr. Chairman, forty-nine Delegates voting Aye, thirty-eight voting No.

CHAIRMAN GRAYBILL: Forty-nine Delegates having voted Aye and thirty-eight Delegates having voted No, Mr. Campbell's motion passes. Therefore, the section now reads: The state of Montana and each person must maintain and improve a clean and healthful Montana environment for the present and future generations. Are there further amendments?

(No response)

CHAIRMAN GRAYBILL: If not, Mrs. Cross, do you want to move that section one as amended -- Mr. Murray, do you want to make the motion?

DELEGATE MURRAY: I move that when this committee does rise and report, after having had under consideration sec-one, subsection one, of committee proposal number six, it recommend the same be adopted, as amended.

CHAIRMAN GRAYBILL: Very well, all in favor of the motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: We have section one adopted. Will the Clerk please read subsection two.

CLERK HANSON: (Reading) Section one, subsection two: The legislature must provide for the administration and enforce-

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ment of this duty. (End reading) Mr. Chairman, subsection two.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration section one, subsection two, of proposal number six, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Very well, the issue then is on subsection two of section one of the Natural Resources proposal. The Chair recognizes Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, at this time I would like to make a substitute motion. On your desks you have a section with my name on it. I would like to strike the language in subsection two and also in subsection three and replace both with this amendment. And, will you change the words in the first line to read as follows: To meet these obligations set forth in section one, each Montana resident may take appropriate legal proceedings against any party, governmental or private, subject to reasonable limitation and regulation as the legislative assembly may provide by law.

CHAIRMAN GRAYBILL: Very well, the Chair understands it to be Mrs. Cross' amendment, substitute motion, that we would take out -- delete subsections two and three on lines twelve through eighteen, and in place put the language: To meet these obligations set forth in section one, each Montana resident may take appropriate legal proceedings against any

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party, governmental or private, subject to reasonable limitation and regulation as the legislative assembly may provide by law.

Mrs. Cross.

DELEGATE CROSS: I would like to explain this action. We discussed the pros and cons for the better part of a day. I think that leaving the two sections in, as in the majority report, greatly weakened the stand of the original statement in section one. Section two does not add anything positive in terms of environmental protection. In fact, it may be detrimental. The legislature does have inherent power to act regarding environmental matters. In addition, there is no way to force such a direction and no one, including the courts, can require the legislature to act in any particular way with regard to the environment or anything else. The danger in section two is that it can be construed to exclusively delegate such authority to the legislature and this would even exclude the courts. Section three also gives further credence to the position that matters relating to the environment are exclusively within the control of the legislature. If there is such an interpretation and if the legislature did not act, there would be no remedy. As I have mentioned before, the legislature cannot be enforced -- or, forced to do any particular type of thing in regard to environmental remedies. Therefore, I submit this motion and I hope that you will support it.

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CHAIRMAN GRAYBILL: Very well, the sum and substance of Mrs. Cross' subsection two is to give a right to sue. Is there debate on the issue? Incidentally, I might say that the Chair has taken the liberty, Mrs. Cross, of amending the first line to say. To meet these obligations set forth in subsection one -- which is what I think you mean. Very well, Mr. Gysler.

DELEGATE GYSLER: Would Mrs. Cross yield to about two questions, please?

CHAIRMAN GRAYBILL: Mrs. Cross, will you yield?

DELEGATE CROSS: Yes, I will.

DELEGATE GYSLER: Mrs. Cross, is it your intent that there be nothing said in this article to set up any -- to direct the legislature, and when this article says must, that's as strong as you can get with the legislature -- to set up the administration and the enforcement to be sure that these things are done as far as we can go? Is it your intent to delete this?

DELEGATE CROSS: I think, Mr. Gysler, that the legislature can do this any way, whether we direct them or not, so I don't see that that section two has much place in the article.

DELEGATE GYSLER: Thank you, Mrs. Cross. I won't ask the other question. I would just like to say, very seriously, I feel that this should come as an article four to be placed in here if it is, because I feel very strongly that this article

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should say to the legislature that you must provide the administration and the enforcement. We can say, well, they're going to do it anyway, but I think we should tell them they must.

CHAIRMAN GRAYBILL: Mr. Gysler, the Chair sees your point and if, when we finish this, it's been amended out the Chair will give you an opportunity to make it as an amendment to put it back in. Is there further discussion of Mrs. Cross' motion?

Mrs. Robinson.

DELEGATE ROBINSON: Yes, would Mr. Gysler yield to a question?

CHAIRMAN GRAYBILL: Mr. Gysler?

DELEGATE GYSLER: Certainly.

DELEGATE ROBINSON: In subsection two, where you feel it important to say the legislature must provide for the administration and enforcement of this duty. What if they don't?

DELEGATE GYSLER: Bring on -- if you don't have that much faith in the legislature, bring on an article later on that allows you to sue the legislature or do anything you want, but have something in there to say that they must provide these kind of things. If you don't have it and you want to sue, I think you're in a worse position to enforce it.

DELEGATE ROBINSON: Mr. Chairman, will Mr. Gysler yield to just one more question?

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CHAIRMAN GRAYBILL: Once more?

DELEGATE GYSLER: Certainly.

DELEGATE ROBINSON: Does -- is it not within the inherent prerogative of the legislature anyway to effectively implement subsection one?

DELEGATE GYSLER: It's within their prerogative, Mrs. Robinson. The thing that we want to be sure of as a committee is that they are directed to. It only takes about one and a half lines and in doing this we direct them to do it and it gives anybody that wants to take any action more force for the action.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Cross' motion to add a right, a legal right to sue.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I'd like to answer Delegate Robinson's question, what do you do if the legislature fails to perform what the Constitution directs them to do -- you vote the scoundrels out of office and elect a new bunch.

CHAIRMAN GRAYBILL: Very well.

Mr. Heliker.

DELEGATE HELIKER: Did I understand the Chair to say we'd have a chance to put that back in?

CHAIRMAN GRAYBILL: Certainly, you'll have a chance to.

DELEGATE HELIKER: So, we're simply voting on --

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CHAIRMAN GRAYBILL: You're voting on Mrs. Cross' amendment--

DELEGATE HELIKER: It's not necessarily --

CHAIRMAN GRAYBILL: She does take it out but I think we could move then to put it in as the next section or another section.

DELEGATE HELIKER: Yes, O.K.

CHAIRMAN GRAYBILL: We aren't through with section one yet. Very well, the issue is on Mrs. Cross' motion to add as subsection two in place of the present subsection two and three, a subsection that reads: To meet these obligations set forth -- to meet the -- these obligations set forth in subsection one, may take appropriate legal proceedings against any person, governmental or private, subject to reasonable limitation and regulation by the legislative assembly as may be provided by law. Do you want a vote on the machine?

(No audible response)

CHAIRMAN GRAYBILL: Recorded vote. Very well, so many as are in favor please vote Aye on the machine and so many as are opposed, vote No. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, close the vote.

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1	Aasheim	-	Nay	Choate	-	Aye
2	Anderson, J.	-	Nay	Conover	-	Aye
3	Anderson, O.	-	Nay	Cross	-	Aye
4	Arbanas	-	Aye	Dahood	-	Nay
5	Arness	-	Absent	Davis	-	Nay
6	Aronow	-	Nay	Delaney	-	Nay
7	Artz	-	Aye	Driscoll	-	Aye
8	Ask	-	Nay	Drum	-	Nay
9	Babcock	-	Absent	Eck	-	Aye
10	Barnard	-	Absent	Erdmann	-	Nay
11	Bates	-	Nay	Eskildsen	-	Nay
12	Belcher	-	Nay	Etchart	-	Nay
13	Berg	-	Nay	Felt	-	Absent
14	Berthelson	-	Nay	Foster	-	Aye
15	Blaylock	-	Aye	Furlong	-	Aye
16	Blend	-	Nay	Garlington	-	Nay
17	Bowman	-	Absent	Gysler	-	Nay
18	Brazier	-	Nay	Habedank	-	Aye
19	Brown	-	Aye	Hanson, R.S.	-	Nay
20	Bugbee	-	Aye	Hanson, R.	-	Nay
21	Burkhardt	-	Aye	Harbaugh	-	Nay
22	Cain	-	Aye	Harlow	-	Aye
23	Campbell	-	Aye	Harper	-	Aye
24	Cate	-	Aye	Harrington	-	Aye
25	Champoux	-	Aye	Heliker	-	Aye

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1	Holland	-	Nay	Reichert	-	Aye
2	Jacobsen	-	Absent	Robinson	-	Aye
3	James	-	Nay	Roeder	-	Aye
4	Johnson	-	Nay	Rollins	-	Aye
5	Joyce	-	Nay	Romney	-	Aye
6	Kamhoot	-	Nay	Rygg	-	Nay
7	Kelleher	-	Excused	Scanlin	-	Nay
8	Leuthold	-	Nay	Schiltz	-	Aye
9	Loendorf	-	Aye	Siderius	-	Aye
10	Lorello	-	Nay	Simon	-	Nay
11	Mahoney	-	Excused	Skari	-	Aye
12	Mansfield	-	Nay	Sparks	-	Nay
13	Martin	-	Nay	Speer	-	Aye
14	McCarvel	-	Aye	Studer	-	Nay
15	McDonough	-	Aye	Sullivan	-	Nay
16	McKeon	-	Aye	Swanberg	-	Absent
17	McNeil	-	Aye	Toole	-	Excused
18	Melvin	-	Aye	Van Buskirk	-	Aye
19	Monroe	-	Aye	Vermillion	-	Aye
20	Murray	-	Nay	Wagner	-	Nay
21	Noble	-	Nay	Ward	-	Aye
22	Nutting	-	Nay	Warden	-	Aye
23	Payne	-	Aye	Wilson	-	Nay
24	Pemberton	-	Nay	Woodmansey	-	Nay
25	Rebal	-	Nay	Mr. Chairman	-	Aye

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CLERK HANSON: Mr. Chairman, forty-four Delegates voting Aye, forty-six voting No.

CHAIRMAN GRAYBILL: Forty-six Delegates having voted No and only forty-four having voted Aye, the motion is defeated. We are back on subsection two of section one. Is there any further discussion of subsection two?

(No response)

CHAIRMAN GRAYBILL: Very well, so many as shall be in favor -- let's see -- upon the motion of Mr. Murray having been made that when this committee does rise and report, after having had under consideration subsection two of section one of article six, the natural resources article, that the same be recommended for adoption -- all in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Two is adopted. Will the Clerk please read subsection three?

CLERK HANSON: (Reading) Subsection three: The legislature is directed to provide adequate remedies for the protection of the environmental life support system from degradation and to provide adequate remedies to prevent unreasonable depletion of natural resources. (End reading) Mr. Chairman, subsection three.

CHAIRMAN GRAYBILL: Mr. Murray.

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DELEGATE MURRAY: Excuse me, Mr. Chairman, I defer to Mr. McNeil for making the motion. There's typographical error--

DELEGATE McNEIL: Mr. Chairman, there's a typographical omission on line seventeen; following the word, depletion, should appear, and degradation.

CHAIRMAN GRAYBILL: What does that word mean, Mr. McNeil? Strike that, Mr. McNeil.

DELEGATE McNEIL: Without answering the Chair's question, those two words were in the proposal as passed by the committee --

CHAIRMAN GRAYBILL: Right, O.K.

DELEGATE McNEIL: -- and should be included before the motion --

CHAIRMAN GRAYBILL: I shouldn't have commented. I was overcome, Mr. McNeil.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration section one, subsection three, of proposal number six, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Very well, the motion is on Mr. Murray's motion that we discuss subsection three.

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I support this language, this provision. I think it means something, with a little

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cleaning up and I would move to amend it as follows: by striking the words, is directed to provide, and placing therein the word, shall, so that it reads, the legislature shall provide adequate remedies; and then striking for the protection and putting in the words, to protect the environmental support system from degradation and to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources, whatever that means. But, this would made it mandatory rather then permissive and would be a directive to the legislature to provide adequate remedies to protect the environmental support system. The language, again, as amended, would read: The legislature shall provide adequate remedies to protect the environmental support system, et cetera, and I would move to amend section three in that regard.

CHAIRMAN GRAYBILL: Mr. Cate, the Chair fails to see where you have added or detracted one whit from the section. I don't see that you have made it any different. Now, Style and Drafting might have wanted to do that to shorten it up or something, but how does saying shall make it any more mandatory than is directed to? I'm not against letting you amend something but I'd like you to be making some clear distinction that we can vote on. I don't see that you've added anything.

DELEGATE CATE: Maybe I haven't. Maybe it's an old lawyer's hangup about the word, shall. Maybe it's a Style and Drafting amendment.

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CHAIRMAN GRAYBILL: The Chair would rule you out of order until you've thought about it a minute --

DELEGATE CATE: All right.

CHAIRMAN GRAYBILL: -- and if you really think it has to be in there, try again, but it looks to me like you haven't added anything that Style and Drafting couldn't take care of. You might make your suggestions to them.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, just in case there is some distinction between directed to and shall, I would like to be assured that we can use the word, shall.

CHAIRMAN GRAYBILL: Anybody object to the word, shall, as against style and drafting? I think you've got plenty of backing, Mr. Schiltz. Is there other discussion of subsection three?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you on the motion of Mr. Murray that when this committee does arise and report, after having under consideration subsection three of section one of the Natural Resources proposal on environment, the same shall be recommended for adoption. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

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CHAIRMAN GRAYBILL: The Ayes have it and subsection three is adopted.

Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I don't know if I'm out of order but I'm going to try anyway. I would like to add a fourth section to section one and it will be the same one that you have on your desk, only this time it will just read as it was printed: To meet this obligation, each Montana resident may take appropriate legal proceedings against any party, governmental or private, subject to reasonable limitation and regulation as the legislative assembly may provide by law. This is basically what is in the minority report but there is a little difference in language. I have talked about it previously and others have talked about it previously, and I think that there is no necessity to discuss it again.

CHAIRMAN GRAYBILL: Just a moment. The Chair has read both the language you had before and the language you have now, and the Chair is going to rule your amendment in order because your previous motion said that it applied to the obligations set forth in subparagraph one, but this one appears to apply to the obligations set forth in subparagraphs one, two and three. In other words, whatever the legislature does, you are now giving the private party the right to enforce by legal -- through a private legal remedy. Therefore, it seems to me your second one is different from the first one. The Chair

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will allow the amendment. Do you wish to discuss it further, Mrs. Cross?

DELEGATE CROSS: No.

CHAIRMAN GRAYBILL: You do not.

Mr. Gysler.

DELEGATE GYSLER: (No response)

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: This is to clarify the situation. It is being submitted as the majority report.

CHAIRMAN GRAYBILL: As the majority or minority?

DELEGATE CROSS: No, it was the minority report, basically, and this is what it goes in as.

CHAIRMAN GRAYBILL: So, you want this submitted as the minority report?

DELEGATE CROSS: Yes, and that page number is sixteen.

CHAIRMAN GRAYBILL: So you want this to be in place of the minority report as shown on page sixteen. Do Mr. McNeil or Mr. Siderius object?

DELEGATE McNEIL: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: I joined in that minority report as a courtesy to my chairwoman. I believe that the motion that has been made now includes the right to sue individuals, as well as the governmental agencies. I will join with Louise in

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urging that this section be passed, primarily because of the language added at the end -- subject to reasonable limitation and regulation as the legislative assembly may provide by law.

CHAIRMAN GRAYBILL: Very well, the record may show that this is the minority report.

DELEGATE McNEIL: Mr. Chairman, may I speak briefly to this?

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: I know the majority feels, and I feel, that this is included in subparagraph three in the mandate to the legislature to provide adequate remedies. Since it has been modified now to read, subject to limitations as imposed by the legislature, I don't believe there's any substantial change but I do recommend its adoption. Thank you.

CHAIRMAN GRAYBILL: Very well. Mr. Harper.

DELEGATE HARPER: Yes. Mr. McNeil, I want to say, thanks. Several times today, during the previous discussion, various ones of you have looked this direction and said, wait until number four comes up, and I sat here each time waiting and seeing if you would do what you said you would do when number four comes up, and you are doing it, and I thank you. I think this is finally down to it. There's nowhere else to go now. Can't go any farther than this. This is the end, and I hope we will pass it.

CHAIRMAN GRAYBILL: Mr. Aronow.

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DELEGATE ARONOW: Mr. Chairman, this may be Style and Drafting. I suppose I should ask Mrs. Cross -- or, Mr. McNeil, I guess I'd better ask you. Shouldn't the --

CHAIRMAN GRAYBILL: Do you yield?

DELEGATE McNEIL: I yield.

DELEGATE ARONOW: Shouldn't the clause, the last -- after that last comma -- subject to reasonable limitation and so on -- shouldn't that go in after, in the first line -- each Montana resident, subject to reasonable limitation and regulation, and so on, may take appropriate --? Do you have any objection?

CHAIRMAN GRAYBILL: Is this a matter of the order of the sentence, Mr. Aronow?

DELEGATE ARONOW: Yes, it is.

CHAIRMAN GRAYBILL: Well, why don't you call that to the attention of Style and Drafting, if this passes, and maybe they can change the order of the sentence.

Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, I'd like to direct a question either to you or Mrs. Cross. Some of the exchange kind of confused me. I thought I heard you say that the language of proposed subsection four would be to meet the obligations set forth in subsections one, two and three.

CHAIRMAN GRAYBILL: Well, what you heard me say was that the amendment she offered a while ago as subsection two

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specifically referred to meet the obligations set forth in subsection one. Now, the one she offers now simply says, to meet this obligation, so I presume it could apply to any obligation that was found to arise either from subsection one or from some action of the legislature under subsections two or three. I merely distinguished the two motions and held that this would be a valid motion to debate, based on the fact that it now modified a different set of subsections.

DELEGATE BRAZIER: I beg your indulgence. I would just call to the attention of whoever is drafting this that I don't think we want to give any citizen the right to sue the legislature. I think you're going to create a few enemies when you show up on June sixth. If that's what -- if we don't intend that, I think we ought to refer to subsection one only, then, and make it more precise.

CHAIRMAN GRAYBILL: I don't -- at the moment it doesn't read to me like you can sue the legislature but maybe you could read it that way.

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, would Delegate Cross yield to a question?

CHAIRMAN GRAYBILL: Mrs. Cross, will you yield to a close question?

DELEGATE CROSS: I'm not sure that I want to, but I shall.

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DELEGATE DAHOOD: Now, Mrs. Cross, does your proposal provide that someone from the eastern part of the state of Montana may come to the western part of Montana and file a law suit, contending that the high quality environment that is discussed in the first three sections has in some way been endangered?

DELEGATE CROSS: I would say that the phrase, or part of the sentence that says, subject to reasonable limitation and regulation, would take care of that.

DELEGATE DAHOOD: Will Mrs. Cross yield to one more question?

CHAIRMAN GRAYBILL: Probably yes.

DELEGATE CROSS: Yes.

DELEGATE DAHOOD: Now, are you not intending by this provision to provide that every citizen in the state of Montana has a right as a party litigant to start litigation anywhere in the state if they think the environment might be endangered in their opinion?

DELEGATE CROSS: I think I could give you the same answer. I would like to remind you that, not too many days ago, you referred to the wisdom of the courts and I presume that wisdom would be there also.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Thank you, Delegate Cross. Mr. Chairman, it is the wisdom of the courts that I want to talk

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about. This is nothing more than the public trust theory. I tried to keep my vow not to speak during the course of this discussion, but I think we are reaching a point now where, by the process of attrition, those who support the private property right of a free society may be very close to casting a shadow upon those rights in the state of Montana. I have been in the pollution litigation field for almost a decade. I have been for the defendant, alleged polluter; I have been for the property owner; I have been in litigation before the district court, before the supreme court of the State of Montana, before the environmental agency from the capitol of these United States, before the state board of health, and at public meetings. I have listened to experts from the east coast and the west coast, from north and south--experts who have written numerous articles, some self-appointed experts. I have listened to doctors and chemists, engineers, pollution control geniuses. I have listened to arguments with respect to what a healthy environment is and what is not, and let me tell you here and now, there is no one that can come forward and tell you what a healthy environment is. I have listened to doctors who tried to define what a healthy environment is and not one has yet succeeded. I listened to the foremost industrial expert in the United States, by reputation -- more than forty years in industrial medicine, a professor of toxicology from a large medical school in the southeastern part of the United

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States. His testimony was given in a court in the state of Montana under oath. I regret that that testimony could not be transcribed for your edification here. You are all talking about a threat in Montana that is more fiction than fact. We have to raise a barrier against pollution and everybody wants to do it, and we have raised a barrier against pollution in the state of Montana. And, the environment that we have now is not going to become worse by any degree. It is going to improve. Why? Because the fight has started and the fight has already been won, and there are agencies and there are citizens and there are scientists and there are engineers and there are captains of industry and there are leaders of labor who are fighting this problem and rolling back the tide of pollution because everyone with any sense wants pollution controlled in the state of Montana and wants a quality environment. We have a form of government that we cherish. The individual citizen bands together, organizes together, decrees government so that his rights will be better protected, and how does he do it? First, he provides through a bill of rights that there are certain basic principles and privileges and rights that he is entitled to have in a free society. And, then, with respect to the larger areas of concern, where he needs the assistance of government for protection, he provides for that government and that government provides for him a legislature and a state board of health and whatever other agency he may need, so that

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he can be protected with respect to those matters that concern the common and general welfare. We have a state board of health and we have a legislature and we have officials who are here to make sure that throughout the state of Montana we can do and will do whatever can be done within reason to maintain a high quality environment and roll back the threat of pollution that may endanger a healthy environment. This provision that is before you now that states a private citizen, anywhere in the state of Montana, has the right to sue any other private party, is an absolute imposition upon the private right to hold and enjoy property in the state of Montana, and if you want to go ahead and pass something like that, then you're going to inscribe upon the history of this state that one day in March of 1972, in Convention Hall, when you were sent here by the people to protect their rights to life, liberty and property, you took away part of that right with respect to property. You can't say that there will be reasonable regulation that's going to stop every frivilous law suit or that's going to stop some crusader from eastern Montana that might not like the environment in western Montana from starting that law suit. You can say the courts have wisdom, yes, the courts do have wisdom and they will protect us to the best of their ability, but you give someone a constitutional right to start that law suit without that individual being affected with respect to his person or his property, then how do you stop that type of litiga-

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tion? There are people that like that publicity. There are people that like to be crusaders. We've watched them over the immediate decade and they take a certain measure of satisfaction out of bringing these matters to issue. When someone is injured in person or in property, if their health is being affected, there is a nuisance that concerns them, we have all the law that is necessary now in the state of Montana to protect those rights, and I challenge any lawyer that's a Delegate to this Convention to stand up and tell me and to tell us that a person does not have a law in the state of Montana now that will protect his right to the full enjoyment of his private property and his right to his personal good health. And, I submit to you that many times you start towards a socialistic trend by well-meaning and well-intentioned legislation, by well-meaning and well-intentioned constitutional provisions. You can say, yes, we're going to increase the protection that you have here by doing this, and at first impression perhaps that is your impression, but think about it. Think about the power it's going to give individuals to control you in the free exercise of your property rights. Is that the type of restriction you want upon that particular concept that's part of everything the American dream means to us? Let me ask -- let me ask some of the Delegates that support this particular provision -- to point out to you how giving a private party the right to sue another private party when that person starting the law

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suit is not affected personally as to health and property, is going to help the general situation. I want them to tell us here and now how they are going to accomplish more for a good and healthy and quality environment by allowing that type of law suit by an individual who is not concerned personally with respect to health and property. I say this--think very carefully. We came here to expand the rights of the individual citizen of the state of Montana with respect to those concepts of right and precious liberty that are part of the American heritage. We are here not only to make sure that the citizens of the state of Montana retain those rights, but to make sure that those rights will be protected in the future, and that there will be an expansion of those rights where necessary to protect the citizen with respect to expanding government. I submit to you today that the proposition that is placed before you does nothing to enhance or protect the individual right with respect to life, liberty, happiness and property, and in the final analysis, takes away the free expression that citizenship is entitled to have with respect to the right of being an American citizen. I oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, Mr. Dahood is the chairman of a committee that will report to us later on. It's entitled the Bill of Rights Committee. I have read through some of their proposals. A good many of them need not be in

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there because they are already our rights, and yet we will take the time to state them and state them in some detail. This is in this same category. He says at first that we have rights. First of all, the people do. And then we provide for government to protect the common welfare. We do. Let's assume a case of a law, for example. We have the right not to be libeled, but if someone libels you, then you have redress as a person. That person has to prove that statement of libel and if he cannot, you have some redress against him. This does not allow for any person to sue you for your private property or in some way take away your right to private property if he cannot show the court, a sensible court, the same courts that deal with libel and all the other laws, that he has some right on his side. Now, I haven't talked to all these emperors, kings, judges, scientists, and the rest of them, and laws, that Mr. Dahood says cannot tell the difference, really, what a healthful environment is. But, I have stood at the head of the Missouri River and drunk water out of it and I have gone in the Missouri River down below Great Falls and I would not drink the damnable stuff, if you'll pardon a Great Falls phrase, and I know the difference. Somewhere between the start and Great Falls, something has happened to that stream and I've got a sneaking suspicion when I stand near where a sewer empties into the stream that I know at least one of the causes. Now, I am simply saying, I don't know all the legal words. I can't

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make the big speech about that. But, somewhere in this document, I, as a citizen, should have the right to try to protect my environment and to protect that stream, and I think we're on the point right now, as I said a moment ago -- we can't go any farther -- where we ought to take our stand.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, I think that we are in an area here where there isn't a lot of history to base our decisions on, but I have done a little research into the area and I would like to make it available to our fellow Delegates. The frivilous law suit is the first thing we should direct ourselves to, I think. Michigan's experience with this has been that, according to the information I have, thirty-one law suits filed since 1970. It might now be thirty-five. Four of those were dismissed as being frivilous. A number of them were brought by private citizens, not very many. Most of them were brought by the state of Michigan or some agency thereof against some private entity that was polluting. And, certainly, I don't feel this is a flood of frivilous law suits. In that regard, the attorney general's office of the department of attorney general of the state of Michigan writes: Passage of this act in Michigan received a great deal of publicity all over the country and, in fact, we had letters outside the U.S. There has not been a significant increase in the number of suits. In fact, the so-called flood of litigation has failed to material-

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ize in approximately thirty cases since the bill went into effect on October first of 1970. We consider Act 127 a useful tool in that it will serve to keep state agencies on their toes, et cetera. Now, in the state of Illinois they have a somewhat similar environmental provision and the attorney general of the state of Illinois writes: This letter is in response to your telephone call of February ninth, 1972. The records of the pollution control board of the state of Illinois show that during the period from July first, 1970, to January twenty-first, 1972, a hundred and two enforcement cases were filed with the board. Of that total, eighteen were cases filed by citizens or other private parties. The remainder of them were by governmental entities. Now, Illinois has a population of ten million nine hundred and seventy-seven thousand people. They also have pollution problems that we haven't even heard of out in this country. Michigan has a population of about eight and a half million -- eight million, seven hundred and seventy-eight thousand -- over ten times the number of people that we have -- and they have pollution problems that we haven't heard of. So, I think the argument that there is going to be millions of law suits filed against all kinds of people is really, when you look at the facts we have available to base our judgment on, unrealistic. Now, if Mr. Dahood's eastern Montanan, which I am and proud of, is such a danger, the legislature can properly limit the right to sue to the county or

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area in which the individual is a resident. And, in this regard, I think we ought to look at what Michigan has done. First of all, Michigan does give a right to sue but only for equitable and declaratory relief. And, as I read that and as I look through some of the cases that have been filed, it appears that you really don't have the right to sue for damages. You have the right to get injunctions, writs of prohibition, writs of mandate, and so forth--the equitable remedies--or declaratory relief, but not damages. And, secondly, they have required that anyone who is going to bring a law suit, if they are not capable of paying the damages, has to post a bond. In this case it's five hundred dollars. And, there's another very practical and realistic part of this thing that has to be considered, and that's the cost of bringing litigation. Now, Mr. Dahood can tell you that to hire an expert can cost you thousands of dollars, thousands of dollars. It's going to cost you money to hire a lawyer. It's going to cost you money for filing fees, for depositions, for travel. You get into one of these environmental suits, you're up against the big boys and you'd better have five or ten grand to spend, and, as a practical matter, people are not going to be bringing frivilous law suits. So, I submit that on the basis of what evidence we have, and trusting again in the legislature, that if we want to put in an effective environmental provision that we should support Mrs. Cross' amendment. Thank you very much.

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CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. President, fellow Delegates, I couldn't help thinking when Mr. Dahood was speaking this afternoon, that if you put the word, liberty, in the place of clean environment, that practically everything he said would have rung true -- that the same kind of talk could be given with regard to the great American ideal of liberty, you know, that we can't define it and there'd be all sorts of litigation. What does liberty mean? You could go on, you know, if I wanted to have you give a right for you to sue, if I took away your liberty we could have days and days saying what that means, and yet, these are the things that have been the ideal of our country. They have been the goal. They have been -- defined the quality of our life. They've been things we've fought for and have -- our sons and daughters have died for. Liberty. And yet, we're saying the same kind of thing. We talk about the goal of a healthy environment. The second big point, it seems to me, as I listened, was the fact that there was, you know -- the point that the legislature and agencies are doing this kind of thing. I couldn't help asking myself, can we do less? Can we help but confirm and support what is happening by the very stamp of approval that goes into a constitution. Lastly, I don't think I saw it until I heard the talk, and I think it's really the point of the whole discussion today. There was a talk about can you, you know, go and sue when I haven't been

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affected? I think that's the point. Environment is different than anything else because we are all affected. It's different than any other type of litigation and we know this now better than we have ever known it before, so that when you talk about environment, I think you have to talk about like we're on this spaceship and we're all in it together and the survival is something that we'll do or don't do together, and so it is different than any other type of litigation we've known in the past because we are all affected.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I would like to move a substitute motion. The substitute motion is contained on page seventeen of the Natural Resources Committee report and it is the minority's proposal. When Mrs. Cross made her motion, previous motion, she said it was in substance the minority proposal, but I have some of the same problems with the motion that she made that Mr. Dahood has. It seems to me that we are getting way out on a limb when we give one party at one end of the state the right to sue an individual party on the other end of the state for something for which he has, in fact, not been damaged in any way. I feel that the proper way to proceed on this thing, if we are going to put this kind of provision in the Constitution, is to direct the legal process through the appropriate governmental agency, and I think this is what the minority proposal does. It omits any reference to the private

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or individual party and would direct these suits through the appropriate governmental agency. And, I would move the adoption of the minority proposal.

CHAIRMAN GRAYBILL: We will allow Mr. Harbaugh's substitute motion. Is there discussion on it?

Mr. Dahood.

DELEGATE DAHOOD: I would like to stand and support the substitute motion and I want to make it clear that my concern for the environment is the same as that of anyone else, and I want the environment protected, but I want it protected by our government, and I want it protected by our public servants in whom we have placed our public trust. I think that this particular provision should give us the protection that we seek, promote the type of environment that we need and at the same time maintain private property rights in the state of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, it doesn't surprise me that Mr. Dahood supports the minority proposal because it doesn't do anything. As I tried to indicate earlier, people in the state of Montana already have legal recourse against governmental agencies that fail to properly carry out the duties prescribed to them by the legislature. I tried to indicate earlier that the administrative procedure act of Montana specifically permits judicial review of such administrative actions.

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1 I would simply like to direct your attention one more time to
2 what we discussed earlier in regard to standing to sue. As
3 you know now, there is a controversy in Montana concerning the
4 E.P.A. and the air standards. It's very likely that we are
5 going to be living under federal air standards, not state air
6 standards, but federal ones. As I tried to indicate earlier,
7 in reviewing some cases of the supreme court, the second cir-
8 cuit court of appeals, and other federal district courts, they
9 have maintained time and time again that you do not have to
10 show -- this is a quote from one of the cases -- Scenic Hudson
11 Preservation Conference versus the Federal Power Commission.
12 Their holding in that case was that a person does not require
13 -- or, a case or a controversy does not require that an ag-
14 grieved or adversely affected party have a personal economic
15 interest. A later case, Udall versus the Federal Power Com-
16 mission, substantiated that decision. A decision last year,
17 the second circuit court ruled in the Citizens Committee for
18 Hudson Valley versus Volpe that any time a statute of any state
19 or the federal government is involved with the protection of
20 natural resources that a group has standing to sue if they are
21 just interested that those protections are not being properly
22 carried out by the agency. Mr. Dahood has attempted to put a
23 smoke screen on this very issue. Like it or not, if the state
24 of Montana doesn't take a stand as it has so far failed to do
25 in terms of air protection, the federal government is going to

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do it and they already have in some states.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow Delegates, I just want to clarify the record on one of Mrs. Robinson's comments. In that Hudson River case, the action was brought under a federal statute -- I repeat, statute -- authorizing suits against federal agencies. A similar statute could be enacted in Montana under our present Constitution and it could be enacted in Montana under the majority proposal, subsection one.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I oppose this substitute motion. I had talked to a number of lawyers in this Convention about just such language as that, and everyone that I talked to, every lawyer that I talked to said, that doesn't mean anything. You have that right now. So, as far as I'm concerned, there's no use in putting meaningless language into the Constitution. I urge you to defeat this and let's take a vote on Mrs. Cross'. You either want that or you don't, but let's not put meaningless language into the Constitution.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to oppose the amendment of Mr. Harbaugh. I feel allowing a citizen to sue a governmental agency again is not adding anything new. I feel that Mrs. Cross' motion and proposal can be amended to be acceptable by Mr. Dahood, and I intend to do that after this

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vote, but I oppose the implementation of this because it does not add anything new and I think we could agree on an amendment to Mrs. Cross', so I would urge that the amendment now before us be denied -- defeated.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: In reference to Mr. -- or, Delegate Blaylock's comments, I'm not aware that we already have the type of right that we're talking about in the minority proposal and I think this type of direction to the legislature is going to give us precisely what we want. But, I want to refer to the bible, Defending the Environment, by Joseph L. Sachs, who, of course, is the foremost proponent of the public trust theory, which is precisely what the proposal of Delegate Cross represents. And, at page one seventy-four, --

CHAIRMAN GRAYBILL: Now, Mr. Dahood, I want to know if you are talking about --

DELEGATE DAHOOD: This is very brief. I am talking.

CHAIRMAN GRAYBILL: I don't care how brief it is, is it on Mr. Harbaugh's amendment?

DELEGATE DAHOOD: Yes, it is.

CHAIRMAN GRAYBILL: You just said Mrs. Cross' amendment, so --

DELEGATE DAHOOD: Well, it pertains to the amendment that we are trying to submit to the Convention at this time, Mr. Chairman, and it will point out a reason why the amendment

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that --

CHAIRMAN GRAYBILL: Very well, I'll listen to it and if it's on section four in the minority report on page sixteen, I'll allow it, and if it isn't, I'll cut you off.

DELEGATE DAHOOD: Very well. Let me make this preparatory statement before I read it. The amendment that is before the body at this time is an amendment that will allow for legal action within the framework of the type of system of government that we have. The proposal of Delegate Cross does not do that. As Professor Sachs says in his book: What, if any, specific benefits to the public are being provided to compensate for the losses that the proposed activity will engender -- talking about public trust. His answer: Only when we are ready to ask such questions and to recognize the legitimacy of public rights as equivalent to private property interests will we truly be on the way toward creating an effective body of environmental law. If we want to take the private property rights that have been so cherished in this country and place them at a different level than the level that they occupy now, then you will pass the type of a proposal that we are objecting to and a proposal which will not solve the problem that can best be solved by the amendment that's before this body now. I would like to ask at this time if Delegate Robinson will yield to a question?

CHAIRMAN GRAYBILL: Mrs. Robinson?

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DELEGATE ROBINSON: I will.

DELEGATE DAHOOD: Delegate Robinson, may I ask how you, as a private citizen, in the event that you wanted to file a law suit for the protection of the environment, would proceed to file that law suit, hire a lawyer, secure the necessary expert testimony and the scientific data that's required to be successful?

DELEGATE ROBINSON: Well, Mr. -- I certainly wouldn't come to you.

(Laughter)

CHAIRMAN GRAYBILL: Mrs. Robinson, is there more to your answer?

DELEGATE ROBINSON: Yes. Mr. Dahood, first of all, I am not sure what you're driving at. I think you have to recognize, first of all, that the legislature will enact certain standards and limitations as the Illinois legislature did, after the enactment of that constitutional provision. I would naturally, if I felt that I was aggrieved, I would go to an attorney and explain my case and if he is competent, I think he would be able to advise me whether or not, within the guidelines established by the legislature, I would be able to proceed, or whether or not I actually had standing to sue.

DELEGATE DAHOOD: With all due respect to Delegate Robinson's answer, that answer probably represents one of the strong arguments for the motion that's before the body now.

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Unless you're involved with some injury to your individual health or to your property, you are in no position to seek damages, and as a consequence, a law suit for the protection of the environment, when you are not personally affected with respect to health or property, is going to require considerable expense and considerable expertise. This is one of the practical factors. Let me submit to this delegation that we should be practical. There's no reason to get lost in theoretical clouds that seem so promising and yet when we're down to earth, we can't make that particular proposition work. It is much better to depend upon the government that we create, upon the people that we appoint and elect to those particular positions of trust and responsibility. We have to assume that they are going to do their duty, that they are going to carry out our instructions, that they are going to carry out our constitutional command to protect the environment. We have no right to presume that they will not do that. We need the power of the state. We need the power and the materiel of an organized society to get the job done right. It's nice to have high sounding platitudes or even sermonettes in the constitution, but if you don't have the power and the materiel to implement that particular protection, as is required under the system of law that we have, then we are really giving to the citizens of Montana nothing but an empty hope. I submit to you, we all want the same objective, we all want the same result. Let's

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be practical citizens and reasonable citizens and intelligent citizens and let's get it done in a way where it's going to work for the benefit of all of us and for the progress of the state of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, we have the matter before us, we've had it all afternoon and all morning, and we are gradually getting to the point where we might be able to decide something. I cannot see why we should accept this substitute offered because it does not provide us any relief. It's just saying boo. I think that the thing we should do is to vote it down and accept the Cross one -- the original motion. We have matters besides this to go on in this proposition and I think it's time we got ahead with it and voted.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President, in our deliberations today there was one question that I had in mind, especially in regard to Mr. Dahood's testimony. And, in fact, if you will allow me -- if I am not out of order, I would like to ask him a series of questions, but before I do, I want to let you know what I am going to ask him questions in regard to, and that is, in Rule Twenty of our rules to the Convention, it says that any Delegate who has significant personal or private interest, economic or otherwise, in a matter before the Convention shall disclose this interest to the Convention. Now, that is the

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sense of what I am going to ask Mr. Dahood. Am I out of order?

CHAIRMAN GRAYBILL: Right. Well, the Chair will rule that Mr. Dahood has already disclosed that issue. He pointed out that he had represented numerous clients on both sides of the environmental issue, which the Chair happens to know is true, and I think he has declared his interest. Therefore, I'll rule you out -- no, you don't have the floor, Mr. Dahood. Therefore, I'll rule you out of order, Mr. Monroe, unless you want to discuss Mr. Harbaugh's substitute motion. He has disclosed his interest as an attorney that handles these kinds of cases -- this type of case.

DELEGATE DAHOOD: (Inaudible. Microphone not turned on.)

CHAIRMAN GRAYBILL: You can if you are going to talk on Mr. Harbaugh's substitute motion.

DELEGATE DAHOOD: I just wanted to point out -- (inaudible; microphone not turned on) -- has to do with the private property owner against a large corporation. I represent the private property owner.

CHAIRMAN GRAYBILL: Very well. Are we ready to vote on Mr. Harbaugh's motion or not? Is there other discussion?

Mrs. Babcock.

DELEGATE BABCOCK: May I please know which amendment it is?

CHAIRMAN GRAYBILL: Yes, I'll read it before we vote.

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It's on page fifteen, Mrs. Babcock. Is there other discussion? Mr. Campbell, I see you up. Do you want to discuss?

DELEGATE CAMPBELL: Just a question, Mr. Chairman. Would a substitute motion be in order at this time?

CHAIRMAN GRAYBILL: No, we have one substitute motion.

DELEGATE CAMPBELL: Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh, you may close. Oh, wait a moment. Mr. Barnard, did you want to say something?

DELEGATE BARNARD: Mr. President, I rise on a point of information. Supposing we adopt section four of the minority proposal and some individual citizen wants to bring an action against some division of the federal -- or, of the local -- the state government, will they have to bring that on their own, pay their own way, or is there some provision where they can file objections with some of the authorities?

CHAIRMAN GRAYBILL: Well, the law presently is they would have to pay their own way and the law would probably be they would have to pay their own way here unless the legislature put in a different sub-rule. But, this provision would certainly leave it having them pay their own way.

DELEGATE BARNARD: That's what I thought.

CHAIRMAN GRAYBILL: Is there other discussion? Mr. Harbaugh, do you want to close?

DELEGATE HARBAUGH: Yes, I'll close. I'd just like to point out that this provision of the minority proposal is

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signed by three members of the committee and I think that several times throughout this discussion it has been pointed out that the committee has done a great deal of work on its proposal, and I think we ought to respect that. It seems to me that this is a much more well thought proposal than the previous motion and I would urge that it be adopted.

CHAIRMAN GRAYBILL: Very well, I take it you want a roll call vote. Very well, all those in favor of Mr. Harbaugh's -- well, first of all, I want to explain, Mrs. Babcock, it's the minority proposal on page sixteen in subsection four there that we're voting on. Those in favor of this minority proposal giving any Montana resident the right to appropriate legal proceedings against any governmental agency charged by law with the implementation and enforcement of any provision of the article -- those in favor, please vote Aye, and those against, please vote No. Mr. Kelleher, you may be recognized and you may vote. Mr. Kelleher's presence is recognized in the journal. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll take the ballot.

Aasheim	-	Aye	Anderson, O.	-	Aye
Anderson, J.	-	Aye	Arbanas	-	Nay

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1	Arness	-	Absent	Davis	-	Aye
2	Aronow	-	Aye	Delaney	-	Nay
3	Artz	-	Nay	Driscoll	-	Aye
4	Ask	-	Aye	Drum	-	Aye
5	Babcock	-	Aye	Eck	-	Nay
6	Barnard	-	Nay	Erdmann	-	Aye
7	Bates	-	Aye	Eskildsen	-	Aye
8	Belcher	-	Aye	Etchart	-	Aye
9	Berg	-	Aye	Felt	-	Absent
10	Berthelson	-	Aye	Foster	-	Nay
11	Blaylock	-	Nay	Furlong	-	Nay
12	Blend	-	Aye	Garlington	-	Nay
13	Bowman	-	Nay	Gysler	-	Absent
14	Brazier	-	Nay	Habedank	-	Aye
15	Brown	-	Nay	Hanson, R. S.	-	Aye
16	Bugbee	-	Nay	Hanson, R.	-	Aye
17	Burkhardt	-	Nay	Harbaugh	-	Aye
18	Cain	-	Nay	Harlow	-	Nay
19	Campbell	-	Nay	Harper	-	Nay
20	Cate	-	Nay	Harrington	-	Aye
21	Champoux	-	Nay	Heliker	-	Nay
22	Choate	-	Aye	Holland	-	Aye
23	Conover	-	Absent	Jacobsen	-	Absent
24	Cross	-	Nay	James	-	Nay
25	Dahood	-	Aye	Johnson	-	Nay

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Joyce	-	Nay	Roeder	-	Nay
Kamhoot	-	Nay	Rollins	-	Nay
Kelleher	-	Nay	Romney	-	Nay
Leuthold	-	Nay	Rygg	-	Aye
Loendorf	-	Nay	Scanlin	-	Nay
Lorello	-	Aye	Schiltz	-	Nay
Mahoney	-	Excused	Siderius	-	Nay
Mansfield	-	Nay	Simon	-	Nay
Martin	-	Aye	Skari	-	Nay
McCarvel	-	Aye	Sparks	-	Nay
McDonough	-	Nay	Speer	-	Nay
McKeon	-	Nay	Studer	-	Aye
McNeil	-	Nay	Sullivan	-	Aye
Melvin	-	Nay	Swanberg	-	Absent
Monroe	-	Nay	Toole	-	Excused
Murray	-	Aye	Van Buskirk	-	Nay
Noble	-	Nay	Vermillion	-	Nay
Nutting	-	Aye	Wagner	-	Aye
Payne	-	Aye	Ward	-	Nay
Pemberton	-	Nay	Warden	-	Nay
Rebal	-	Nay	Wilson	-	Aye
Reichert	-	Nay	Woodmansey	-	Aye
Robinson	-	Nay	Mr. Chairman	-	Nay

CLERK HANSON: Mr. Chairman, thirty-seven Delegates voting Aye, fifty-five voting No.

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CHAIRMAN GRAYBILL: Fifty-five having voted No, and thirty-seven having voted Yes, that motion fails and we are back on Mrs.Cross' amendment.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move that the committee rise and report progress and beg leave to sit again.

UNIDENTIFIED DELEGATES: No.

CHAIRMAN GRAYBILL: Very well, we'll take a vote on that. There is a social activity tonight and I don't know whether we can finish this issue or not, but if you care to, we'll start here again tomorrow morning, or we'll complete. All those in favor of rising and reporting please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. All those in favor of rising and reporting vote Aye, opposed No. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, forty-seven having voted No, forty-five having voted Aye, we will not rise and report. Mr. Etchart, would you take the Chair?

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(Delegate Etchart in Chair of Committee of the Whole.)

CHAIRMAN ETCHART: The Committee of the Whole will be in order.

Delegate Graybill.

DELEGATE GRAYBILL: Mr. Chairman, I understand that we are debating Mrs. Cross' motion and I would like to discuss this briefly since I have some views on it that are rather strong. First of all, I have listened carefully to my learned brother, Mr. Dahood, and I am impressed by what he says because I think what he says is correct, but I would like to point out to you that his result might not necessarily be the best. I think the issue is, as he has stated it, whether or not we wish to sustain property rights in our Constitution for its term, or whether we want to enlarge human rights in our Constitution by this amendment. Now, the issue is -- let's get the issue clearly out. The issue is, do we want to give people the right to sue for environmental damage to the entire environment. Now, Mr. Dahood is absolutely right that at the present time, people cannot sue unless they can show damage. People cannot sue unless they can show damage. The people whose trees are hurt at Columbia Falls can sue. The people whose cows are hurt, in the case Mr. Dahood has, can sue. But, the rest of the people cannot sue because they cannot show damage. Now, the issue is, and this is a national issue -- the issue is,

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should we enlarge the people's right to sue in the environmental case. The argument in favor of it is that the environment is, in fact, all of our environment and the damage, because it is slow -- I could use the nasty legal word, insiduous -- insidious -- but in any event, the damage is slow and rising slowly, and no one individual, except those right in the immediate vicinity, can show an immediate damage, but clearly everyone can show a damage in the long run. A while ago Mr. Dahood said, can someone come from eastern Montana and sue in western Montana because they're despoiling the mountains or lumbering wrong or doing something else, and he thinks that would be a terrible thing. First of all, it wouldn't necessarily happen. It would depend on the legislature. But, the point is that once the mountains in western Montana have been despoiled, it's just as despoiled for someone that lives in Glendive as it is for someone who lives in Missoula, and that's the point of enlarging the right. Now, the purpose here is not to enlarge the right in all cases, not to say that you can sue in automobile accidents unless you have damage, not to say that you can sue in other private cases unless you have damage, but to say in the environmental case only, the question is, should we enlarge the right and let private citizens help enforce it. Now, Mr. Dahood is also absolutely right when he says that we have good agencies that try to enforce these rights. The trouble is that sometimes the good agencies get thwarted. The trouble

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is that sometimes the good agencies get lazy or turn out to be not-so-good agencies. Then the question is whether you are going to enlarge the right of the people to come in and sue individually. Now, of course, Mr. Dahood is again right when he says that it's terribly expensive and it requires experts and it requires competent lawyers and it requires months of testimony. He's absolutely right, and if the neighbors are poor and don't want to do it, and if the environmental agency doesn't do it for some reason -- it's already overextended, it's appropriation is gone or something else -- then, no one will do it unless you enlarge the right of the individual to sue. So, that's your issue. I know how I'm going to vote. You all know how I'm going to vote and I know how many of you are going to vote. But, the issue is, are we going to enlarge this right in the environmental area only. Now, there's one other thing that I want to deal with. Mr. Dahood is only wrong, if he's wrong at all, in one little area and that is that some parade of horribles is going to happen if we enlarge this right. He's wrong because, in the first place, it's not necessarily wrong for a man in eastern Montana not to want the air quality or the mountains or the streams of western Montana to be despoiled. The fact of the matter is, he may have just as much of an interest in the mountains and the streams as the man that lives right close. So, it isn't necessarily wrong. Secondly, the provision we are debating here says that the legislature may

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1 enact suitable legislation to carry this out, and the legisla-
2 ture may prescribe in any manner it sees fit that's reasonable
3 this right. Now, one manner that it might see fit would be to
4 limit the people who could bring an environmental case to the
5 county or the area involved. Mr. Dahood and all the lawyers
6 here know that it's possible -- not always done, but it's pos-
7 sible for the legislature to limit the area in which you can
8 bring a suit. Sometimes you can only bring a suit in the coun-
9 ty where the incident occurred, and that could be done by the
10 legislature if, in fact, the legislature found that it was a
11 terrible thing to let people from eastern Montana defend west-
12 ern Montana. Thirdly, just this last year, the legislature
13 did something quite interesting. It passed a law that in cer-
14 tain law suits, if the court finds that the law suit is --
15 id doesn't even have to be frivilous -- if the court just finds
16 that the plaintiff -- that the defendant was really wronged by
17 having this suit brought against it, then the court may assess
18 all the court costs and, in fact, attorney fees against the
19 plaintiff. This little old law that the legislature could
20 pass would clear all these bad situations up because then the
21 environmental plaintiff would have to be sure he was right or
22 he'd pay all of Mr. Dahood's and my attorney fees if we are on
23 both -- on opposite sides. So, there are plenty of ways to
24 avoid the parade of horribles, all in the hands of the legisla-
25 ture, all in the hands of the people. The problem is not the

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parade of horribles. The problem is whether you want to, here in Montana, because of our environment, grant a right to plaintiffs that is greater than we have granted before. And, when you vote on this -- whether you do it today or tomorrow -- that's what you are going to decide. Thank you.

CHAIRMAN ETCHART: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, until Mr. Graybill spoke, I wasn't sure I understood what Mr. Dahood said --

(Laughter)

DELEGATE BOWMAN: -- except that I knew he said it very well. I got a few notes down and would like to amplify for just a minute, if I may. Mr. Dahood says that Mrs. Cross' amendment is an imposition on private rights to hold private property. I do not believe that this is the case. I think that none of us is intending to impose the private right to hold private property. What we are trying to do is decide what we are going to do with the private property. I believe that that's our concern. I believe that we in eastern Montana are just as affected by what goes on in western Montana as the people in western Montana. This environment is a chain reaction. Again, if you're that worried about it, the legislature, according to Mrs. Cross' amendment, can make provisions that will keep us from going into western Montana. No where in this do I see any implication of the right to sue for damages. I think that Mr. Dahood said that the governmental agencies are doing

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their duty. Perhaps they are. I think that if they do do their duty, the necessity for suits diminishes greatly. I do not believe that the environment is going to improve under the situation that we have now. I think the fight has started, but I don't think it's anywhere nearly been won. In fact, I think recently we have suffered a very great defeat as far as our air quality standards are concerned. I would like to urge this committee to adopt Mrs. Cross' amendment. Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, the various lawyers and other individuals -- I'll include a lot of you -- have been waving a red herring around here all day and you've been waving it so long it's beginning to smell bad. Now, that red herring has been the thought and the implication that an individual, myself, can come over here and sue Mr. Dahood and appropriate his law practice and his home. I can't find anything in any of the words in Mrs. Cross' amendment that allows any individual to take the private property away from any other individual. That has been shouted from the mountain tops and from the prairies that this public trust, if you want to use that word, or that this amendment of Mrs. Cross allows someone to go and take the property, private property, away from the other person. Now, if I'm wrong, I want some of the learned legal profession to come up and tell me so. But, that is not

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true. All you can do is sue. You can't take a man's property away from him. If he's polluting, you can sue to have him stop polluting. When you sue the company that is polluting -- the suits against the Anaconda Company at Columbia Falls, the suits against Waller-Hoerndorf in Missoula, or the suits against the company in Garrison doesn't in any way bring -- allow the people to take over the property of the Anaconda Company at Columbia Falls, nor any other property, so why are you continually waving this red herring around that this will allow people to take over other people's private property? It does not. All it does is allow you to protect yourself from the pollution that is being created by some other private individual. So, I am hoping by now you have reached your sense and will support Mrs. Cross' amendment.

CHAIRMAN ETCHART: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, a while back I thought I heard one of our younger delegates say that he wanted to make a suggestion on this. Will Mr. Campbell yield to a question?

CHAIRMAN ETCHART: Mr. Campbell, will you yield to a question?

DELEGATE CAMPBELL: I will yield.

DELEGATE SCANLIN: Was there some suggestion that you wanted to make for clarification on this, Delegate Campbell?

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DELEGATE CAMPBELL: No.

DELEGATE SCANLIN: Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I have been a little hesitant to speak a great deal about this measure. I feel very strongly about it because I live in a community where we have one of those problems such as Missoula has, although it does not affect my home or my city, but certainly, as a Montanan enjoying the splendor and majesty of Glacier National Park, I am concerned about the aluminum plant at Anaconda -- or, at Columbia Falls -- the Anaconda aluminum plant. I am concerned also for those approximately one thousand people who are working there. I am concerned because some man who could post a five hundred dollar bond could hire a lawyer, could bring an action which might enjoin the operation of that plant, and which might put those thousand people out of work for a period of three years while the litigation was being settled and concluded. Now, that man might not have the money to pay the wages of those working people for those three years. That man might not have the money or the ability to pick up the mortgages on the homes of those people. He might not have the money to retrain and place them elsewhere. He might not have the means to restore to that community what he will have taken from it by the payment of an attorney's fee and a bond. And, so, my position in this matter is that sections one, two and

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three are as strong or stronger than any I have seen and that we should not proceed with the allowing of private law suits because I think it is to the detriment of the working man in Montana if we do so. Now, let us think about this for a moment, too. Industry in Montana now is regulated by our legislature. Industry in Montana now is making progress to solve the pollution problems that exist, and I agree that they exist. Industry now is pouring most of its profit in the efforts to control and to improve the environment -- control the pollution problem. If industry cannot make money, it shall close. Industry, if it is not making money, has no reason to stay in existence. It is the working man who ultimately loses when industry closes and so, I stand in support of the working man in my community, and I resist Mrs. Cross' motion.

CHAIRMAN ETCHART: Mr. Graybill.

DELEGATE GRAYBILL: Now, Marshall, you know as well as I do that no court in the country is going to close the plant until after the case is over.

CHAIRMAN ETCHART: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I merely want to respond to Delegate Harlow's statement. I don't think that any of my comments or arguments were intended to indicate to anyone here that some private citizen, through a private law suit, is going to take private property in the sense that there will be an actual physical possession of that property. No one has

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within the state of Montana. That can only be done with respe to public purpose under the eminent domain provision of the Constitution of this state. But, when you restrict the right of an individual to use his private property, that is contrary to the tradition in this state and this nation, and some times there can be enough restriction so that there's an actual taking of the right to enjoy that property, and that does conflict with the basic constitutional guarantees that we have. If a private individual can go to a private property owner and say, I don't like the way you're using that property because, in my judgment, that is injuring the environment and in years to come, because environment is the total concept -- it's part of a total life sustaining system, it's going to injure me, that is going to restrict the use of that property. If the legislature says from this constitutional command, we shall set up some administrative body that requires that whenever I want to add to my property or improve it or do something to it, that I have to have some administrative license to do it so that the environment is going to be protected in the judgment of this constitutional command, then I am taking the right to use that property as a free citizen and I am destroying a basic right of citizenship in a free society. Thank you.

CHAIRMAN ETCHART: Mrs. Robinson.

DELEGATE ROBINSON: Yes. Will Mr. Murray yield to a question?

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CHAIRMAN ETCHART: Will you yield?

DELEGATE MURRAY: I'm shaking, Mr. Chairman, but I will.

(Laughter)

DELEGATE ROBINSON: Mr. Murray, I was wondering if you knew Illinois has the same provision that we are trying now to get in the Montana Constitution? Do you know how many companies or how many industries have been closed in Illinois because of this?

DELEGATE MURRAY: I can't answer your question, Mrs. Robinson. I don't know.

DELEGATE ROBINSON: Mr. Chairman.

CHAIRMAN ETCHART: Mrs. Robinson.

DELEGATE ROBINSON: I know. None. And nobody has been unemployed because of this. Not one person. Also, I do know that the state of Montana, the state of Illinois, also grant variances in which time any polluting company has time to comply with these things. I would merely like to suggest here that one man's right ends where someone else's begins and this is the question we have to deal with here.

CHAIRMAN ETCHART: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I have refrained all day from arising regarding this problem because in most respects it's not really my problem, but it does not appear to me that it is becoming and will become in my community a very serious

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problem. I want to call your attention to the next sections with regard to water rights and to the last sentence of subparagraph five on page four. No appropriation shall be denied except when such denial is demanded by public interests. Now, Gallatin County depends upon irrigation. When water is taken from the Gallatin --

CHAIRMAN ETCHART: Mr. Berg, will you stick with subsection four, please?

DELEGATE BERG: I'm with it. I'm with it, really. When water is taken from the Gallatin river for irrigation and it's put back into the stream, as the law necessarily requires it to be put back, it's not clean water. It's dirty water, and there are times when people -- this interferes unquestionably with the recreational use of that stream, and here you have on our local level the very problem that Mr. Dahood is talking about on an individual basis. The question will arise under this situation whether an individual, take a fisherman, can stop the irrigation of that stream on that land because it interferes with a recreational right for which he can show no damage but which, if he does, is certainly going to affect the economy of Gallatin County. This is a very important factor to me when you consider the question of whether one citizen may sue another or prevent another from an activity that is of economic interest. What is the public interest here, in Gallatin County, recreation or agriculture and irrigation? This

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is fundamental.

CHAIRMAN ETCHART: Mrs. Cross.

DELEGATE CROSS: I was just going to request if I could close, Mr. Chairman.

CHAIRMAN ETCHART: Mrs. Eck.

DELEGATE ECK: I'd just like to make one remark before she closes and that is that we, without hardly a murmur, passed subsection three which indicates that the legislature will provide remedies. It seems now that a lot of you who passed subsection three and approved it didn't really intend for the legislature to provide these remedies. I think that this section of Mrs. Cross' allows the legislature to limit the power and yet it does guarantee the citizen that he does have this right, and I think that under this kind of provision, the legislature is pretty sure to enact the necessary limitations. Thank you.

CHAIRMAN ETCHART: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, it was the concensus of the majority of the committee that a section like this was not necessary when a section like number three is written in, and this is the reason that the majority did not go along with the right to sue provision because we felt that there were so many open ends to it. In regard to the statement that Mr. Cate read, the letter that Mr. Cate read from Illinois. I have also got that statement. He did not read the bottom of the

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page where you get into the other -- towards the end of the letter, Jerry -- where you get into the other court cases which are starting -- which are increasing but they didn't say to what extent. They said that they had not as yet reached the flood stage. The thing is that any time a provision is enacted it takes a while for the people to find out it's there and how it works. If this provision is, as that letter from the attorney general of the state of Illinois said, that this is an -- the court -- or, the cases are increasing, then it leaves very serious doubts in my mind as to just what we are doing. Just one more point I want to make -- or maybe two. First, I want to tell Delegate Harper that if it hadn't been for the city of Fort Benton about ten or fifteen years ago going to court and requiring the city of Great Falls at that time to put in a sewage treatment plant, that water probably wouldn't be that pure and unless something happens, we'll probably do it again. Now, this proposed amendment -- everybody says, well, the legislature is going to do it. The legislature is going to provide the guidelines. It is the contention of the majority that subsection three has already directed the legislature to provide the guidelines on this. If the legislature so desires to enact along with the restrictions, which most of you people who advocate the right to sue seem to advocate, that there is restrictions in there, they want to put the right to sue in and put all of the legislative wording in that it takes to guarantee

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one right and guarantee the other right, fine. It is the majority's view that this is a legislative problem and the legislature should handle it all the way through.

CHAIRMAN ETCHART: Mr. Conover.

DELEGATE CONOVER: Will Mr. Dahood yield to a question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE CONOVER: Mr. Dahood, I am a farmer, as you know. For example, we do strip farming and block farming and you know what these winds are in Montana, and if you come through my area and the dust is so thick that you can't see in front of you, what are you going to do about it?

DELEGATE DAHOOD: I probably would be very understanding but I know people in the state of Montana who would not be sufficiently understanding and you'd probably have a law suit because you're affecting the high quality of the environment, Mr. Conover.

CHAIRMAN ETCHART: Mrs. Cross, would you care to close? Will you close?

DELEGATE CROSS: I would like to close this on a little bit of philosophical thought, if I may, and I will quote from a statement I made -- oh, I suppose it's about ten days ago. Between the knowledge that our economy must proceed and that man must rise above his own immediate gain, the Delegates to this Convention must decide what they shall do. I have been

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aware of the pressures that will come, indeed are coming, pressures from those who must return money to their investors, pressures from those who must promote employment, pressures from those who must maintain a tax base, and pressures from those who fear the loss of a livelihood. Somehow, your elected Delegates must exercise prudent judgment without yielding to pressures not commensurate to the cause that we all must serve. If beasts and birds abound no more, and fish grow scarce on every shore, what chance have you and I, my friend, to meet a different, gladder end? Thank you.

CHAIRMAN ETCHART: Members of the committee, you have before you for your consideration the proposed subsection four as outlined by Delegate Cross, and you will have a roll call vote. As many as are in favor will vote Aye. As many as are opposed will vote No. Has every member voted?

(No response)

CHAIRMAN ETCHART: Does any member wish to change his vote?

(No response)

CHAIRMAN ETCHART: If not, the Clerk will record the vote.

Aasheim	-	Aye	Arness	-	Absent
Anderson, J.	-	Nay	Aronow	-	Nay
Anderson, O.	-	Nay	Artz	-	Aye
Arbanas	-	Aye	Ask	-	Nay

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1	Babcock	-	Nay	Eck	-	Aye
2	Barnard	-	Nay	Erdmann	-	Nay
3	Bates	-	Nay	Eskildsen	-	Nay
4	Belcher	-	Nay	Felt	-	Absent
5	Berg	-	Nay	Foster	-	Aye
6	Berthelson	-	Nay	Furlong	-	Aye
7	Blaylock	-	Aye	Garlington	-	Nay
8	Blend	-	Nay	Graybill	-	Aye
9	Bowman	-	Aye	Gysler	-	Nay
10	Brazier	-	Nay	Habedank	-	Nay
11	Brown	-	Aye	Hanson, R. S.	-	Nay
12	Bugbee	-	Aye	Hanson, R.	-	Nay
13	Burkhardt	-	Aye	Harbaugh	-	Nay
14	Cain	-	Aye	Harlow	-	Aye
15	Campbell	-	Aye	Harper	-	Aye
16	Cate	-	Aye	Harrington	-	Aye
17	Champoux	-	Aye	Heliker	-	Aye
18	Choate	-	Nay	Holland	-	Nay
19	Conover	-	Nay	Jacobsen	-	Nay
20	Cross	-	Aye	James	-	Aye
21	Dahood	-	Nay	Johnson	-	Nay
22	Davis	-	Nay	Joyce	-	Nay
23	Delaney	-	Nay	Kamhoot	-	Nay
24	Driscoll	-	Nay	Kelleher	-	Aye
25	Drum	-	Nay	Leuthold	-	Aye

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Loendorf	-	Aye	Romney	-	Aye
Lorello	-	Nay	Rygg	-	Nay
Mahoney	-	Excused	Scanlin	-	Aye
Mansfield	-	Nay	Schiltz	-	Aye
Martin	-	Nay	Siderius	-	Aye
McCarvel	-	Nay	Simon	-	Nay
McDonough	-	Aye	Skari	-	Aye
McKeon	-	Aye	Sparks	-	Nay
McNeil	-	Aye	Speer	-	Aye
Melvin	-	Aye	Studer	-	Nay
Monroe	-	Aye	Sullivan	-	Nay
Murray	-	Nay	Swanberg	-	Absent
Noble	-	Nay	Toole	-	Excused
Nutting	-	Nay	Van Buskirk	-	Aye
Payne	-	Aye	Vermillion	-	Aye
Pemberton	-	Nay	Wagner	-	Nay
Rebal	-	Nay	Ward	-	Nay
Reichert	-	Aye	Warden	-	Aye
Robinson	-	Aye	Wilson	-	Nay
Roeder	-	Aye	Woodmansey	-	Nay
Rollins	-	Aye	Chairman Etchart	-	Nay

CHAIRMAN ETCHART: Forty-four having voted Aye, fifty-four having voted No, the motion has failed.

(President Graybill resumes chairmanship of the Committee of the Whole.)

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CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I'll try it one more time. I didn't make that motion to stop the debate. I made that motion for a reason and that was for one of our Delegates who is giving a party tonight and so all of us would have a chance to attend on time. That was the only reason and no other. With that, I move that when this committee -- I move that this committee rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: The motion is that this committee rise and report progress and beg leave to sit again. We are not adjourned. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Very well, as soon as the journal clerk gets the report ready, we'll be able to move on.

(President Graybill in Chair of Convention)

PRESIDENT GRAYBILL: The Committee will be -- the Convention will be in order. Will the Clerk please read the title of the report of the Committee of the Whole?

CLERK HANSON: (Reading) March first, 1972. Mr. President, we your Committee of the Whole, having had under

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consideration Report Number Six of the Committee on Natural Resources and Agriculture, recommend as follows:

PRESIDENT GRAYBILL: Does anyone wish to have the Committee of the Whole report read in full?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well, Mr. Eskildsen, will you make a motion for its adoption? Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

PRESIDENT GRAYBILL: The motion to rise and report progress is passed and we'll -- I take it we all know that Mrs. Babcock has invited us to dinner and I think I'll make that announcement once more. Mr. Eskildsen, have you another motion?

DELEGATE ESKILDSEN: I move we stand adjourned until nine A.M., Thursday, March second, 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until nine A.M., tomorrow morning. All in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 5:35 o'clock, P.M.)

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